UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

— — —

IN RE: AUTOMOTIVE PARTS ANTITRUST LITIGATION

Case No. 12-02311

Hon. Marianne O. Battani

_____/

STATUS CONFERENCE / MOTION HEARINGS

BEFORE THE HONORABLE MARIANNE O. BATTANI
United States District Judge
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
Thursday, October 3, 2019

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Please note, the appearances listed above are the attorneys who presented argument before the Court, and does not encompass all attorneys present.

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Detroit, Michigan
Thursday, October 3, 2019
at about 10:04 a.m.

— — —

(Court and Counsel present.)

THE CASE MANAGER: Please rise.

The United States District Court for the Eastern District of Michigan is now in session, the Honorable Marianne O. Battani presiding.

All persons having business therein, draw near, give attention, you shall be heard. God save these United States and this Honorable Court.

You may be seated.

The Court calls Case No. 12-md-02311, In Re Automotive Parts Antitrust Litigation.

THE COURT: Good morning.

THE ATTORNEYS: (Collectively) Good morning, Your Honor.

THE COURT: Now I remember why we had our meetings on Wednesdays, it's because Thursday is immigration day. Okay. Sorry about that.

Do we think we have most of the people? Yeah? Okay.

All right. Let us begin by starting with Mr. Esshaki's report. Gene.

MASTER ESSHAKI: Yes. Thank you very much, Your Honor.

Good morning, everybody. It's good to see you all again. I was just reminiscing with Ms. Romanenko; her child was born during this case, and that child is going to be two years old next Monday. It's been fun.

The level of motions have decreased significantly. I think that's because of several reasons: One of which the case is winding down. Two, I think, as I explained to the Court this morning, there's a body of law out there, "Master Esshaki's Prior Rulings," when you know what I'm going to rule and don't have to bring the motions anymore.

But since we were last together, we have had about four discovery motions. There is one currently pending. All in all, there have been 98 motions in this case. It was a nice task. It was very educational, and enjoyed all the work. So, please, if you have a motion, please do not hesitate to make contact with me.

That's it, Your Honor. Thank you.

THE COURT: Okay. Thank you. Anybody have any questions for the Master?

(No response.)

THE COURT: All right. Thank you, Gene.

Let's look at the status. Direct purchaser, status of settlement. Who is doing that? Okay.

MR. HANSEL: Good morning, Your Honor. Greg Hansel for the direct purchaser plaintiffs.

THE COURT: Good morning, Mr. Hansel.

MR. HANSEL: I'm pleased to report that the direct purchasers have reached four new settlements since the last status conference. We have filed complaints in a total of 24 parts. We have completely settled 12 of those, so 50 percent, at least in principle, with some settlement agreements still being hammered out.

So out of the 24 parts, we have settlements in at least -- with at least one defendant in 22 cases. Seven out of the 24 only have one defendant remaining. And we have now settled with 34 defendant families, total.

THE COURT: Tell me again, how many are remaining? How many defendants are remaining?

MR. HANSEL: Well --

THE COURT: Or parts, if you want to do it by parts.

MR. HANSEL: So out of 24 parts, we have completely settled 12, at least in principle, so that leaves another 12.

THE COURT: Another 12. Okay.

MR. HANSEL: But seven of those only have a single defendant remaining.

And with respect to those that we have not settled, we continue to litigate and try to bring them to a conclusion

as soon as possible.

THE COURT: Okay. How about your mediation schedule with your mediators, how is that going?

MR. HANSEL: Yes. We continue to mediate and have settlement discussions on a number of fronts. We had a mediation as recently as last week. So the mediators are well engaged, and we continue to work with them.

There are some cases where there are legal issues, including appeals, that the parties have reached an impasse in either bilateral settlement negotiations or in mediations, and we are waiting for rulings, including from the Sixth Circuit.

THE COURT: All right. I usually get a summary from the -- from Mr. Weinstein, but I didn't get it. It's not coming until Monday, so that's why I'm a little bit behind here. I guess somebody there had a baby, too, so --

MR. HANSEL: Yes.

THE COURT: I mean, I hope we finish this about adulthood. All right. Thank you very much.

MR. HANSEL: Thank you, Your Honor.

THE COURT: End payors. Mr. Reiss.

MR. W. REISS: Good morning, Your Honor. Will Reiss for the end payor plaintiffs.

THE COURT: Good morning.

MR. W. REISS: No new real developments since last

time. We've settled with every defendant in all 41 cases, with the exception of Bosal, which is a defendant in the exhaust system case, and we are currently litigating with them.

THE COURT: Okay. So out of all of your parts, the only one left is the Bosal?

MR. W. REISS: Correct, yes.

THE COURT: Okay. Thank you.

MR. W. REISS: Thank you, Your Honor.

THE COURT: Auto dealers.

MR. RAITER: Good morning, Your Honor. Shawn Raiter on behalf of the auto dealers.

Since the last status conference, the Court has now authorized the dissemination of notice for our round four settlements, and we have the final fairness hearing scheduled for December 10, before Your Honor. Notice has not yet gone out. The order just came across recently, so the notice should go shortly.

Our round three settlements, we need to get allocation plan orders in place. There's, I think, one or two -- or at least a few still outstanding. Once those are in place, we expect to make payments on our round three settlements within just a few weeks.

THE COURT: Good.

MR. RAITER: Thank you.

THE COURT: Thank you. Truck and equipment dealers.

MR. POTERE: Good morning, Your Honor. Kevin Potere, with Duane Morris.

So the truck and equipment dealers have settled or dismissed all of their pending claims. And I was hoping to be able to present an argument for final approval of our last settlement, which is with the TKH Holdings Trust today.

THE COURT: Right.

MR. POTERE: Unfortunately, we had some issues with the notice to class members. The cost is quite prohibitive, in terms of mailing.

THE COURT: We have that on right now, right, for the motion?

MR. POTERE: That's correct, Your Honor. So we move to modify the order that granted preliminary approval to make notice to class members concurrent with other mailings that we would send to class members regarding filing claims with the administrators. So instructions that are currently pending before Your Honor, we would like to bundle those together, in order to save some of the costs associated with direct mailing.

THE COURT: Why don't we just go ahead and do that right now? You need new dates on some things, is that --

MR. POTERE: Well, Your Honor, we have a -- we

filed a motion that sought both approval of plan of allocation for some of our settlements and also authorization to mail out instructions and claims forms. It was sort of one large motion. That's still pending before the Court. As soon as that is addressed by the Court, we can send out a mailing regarding the TKH settlement, and the instructions, and start the claims process for distributing funds.

THE COURT: Okay. Why don't we address it right now?

MR. POTERE: Absolutely, Your Honor.

THE COURT: Okay. Go ahead.

MR. POTERE: So -- I apologize, Your Honor. By address it right now, you mean, address the pending motion for allocation?

THE COURT: The pending motion, yes.

MR. POTERE: Certainly, Your Honor.

So we have a plan of allocation pending for cases involving starters, radiators and alternators. There is a total of, I believe, $10 million in settlements that have already received final approval from the Court, Your Honor. And the plan of allocation basically assigns a point system that has been used in other cases with similar parts, and so we believe it is a fair plan of allocation.

In conjunction with that plan of allocation, we have also sought permission to distribute instructions to the

class members. The instructions will be a single sheet of paper that directs class members to the website, because we believe that it will be much easier for the class members to complete a claims form online versus trying to fill in all the information in paper format, and it will also present additional savings to the class.

So we have the plan of allocation, the instructions, the claim form, which a draft, which is currently part of our motion, and then we respectfully ask permission, assuming that final approval is granted for the TKH settlement, to start distributing funds to the class members.

THE COURT: Okay. In terms of notice to your class members, you're doing this by direct mail; is that correct?

MR. POTERE: That's correct, Your Honor. The costs are approximately $125,000 per mailing, so we just -- we wanted to sort of help defray some of those costs by combining mailings together.

THE COURT: Okay. The Court reviewed the plan of allocation, and I know it is very similar to what we had in other parts, if not almost identical.

MR. POTERE: That's correct, Your Honor.

THE COURT: And I approved it then, and for the same reasons, it appears to be a reasonable and logical -- although I have to say the Court could not do the

math in detail, on anything, but it appears to be reasonable, with experienced people creating this plan, and the Court does approve that plan.

MR. POTERE: Excellent. Thank you, Your Honor.

THE COURT: And there was the distribution of the claims form, the form is simple, and I think it's reasonable to do this at one time, and to do the one mailing, and to have the claims form there.

But there is another issue, and isn't that to -- determination for dealership groups?

MR. POTERE: Yes, Your Honor. I apologize. I failed to mention that.

So there is one additional issue, which is an issue that has come before the Court before, where you have a dealership group that is located in an included state, but also has dealerships in non-included states, and so the question arises, how to deal with those dealership groups. And we propose that you adopt the similar strategy that you have adopted in other cases, which is that if the financing and approval for purchasing the truck and equipment is all coming through the dealership group that's in an included state, trucks that are sent to non-included dealerships can also be included in the final settlement claims.

THE COURT: Right. Okay. I see no reason to change my determination on that matter, and the Court will

approve that.

MR. POTERE: Thank you, Your Honor.

THE COURT: Okay. So this motion, then, is complete and granted. And then there was another one, the one to modify the order.

MR. POTERE: Yes, Your Honor. So originally the final approval for the TKH settlement was scheduled for this hearing. We would just ask that it be set for the next hearing date before the Court.

THE COURT: Is that the date you want, is the next hearing, or do you want something before that?

MR. POTERE: Well, now that the Court has granted our -- approved our instructions, Your Honor, we can use the next available date, which I believe is in December -- or February. I apologize.

THE COURT: We are going to talk about that date, actually. That date -- well, right now, we will talk about it. I am thinking of doing it in March, March 18th, due to other dates.

Everybody, get your calendars out. Let's figure out the next date for a hearing.

Molly, what's December 10th? Is that a date that we had --

THE LAW CLERK: Auto dealers are coming in on December 10th for four settlements, so we can probably do

that the same day.

THE COURT: We have auto dealers coming in for four settlements on December 10th. If you want to come in that date, we could do it the same date.

MR. POTERE: That would be excellent, Your Honor.

THE COURT: Is that enough time?

MR. POTERE: Yes.

THE COURT: Let's do that. I would prefer to do it earlier rather than later.

MR. W. REISS: Your Honor, just to remind you, we also have a final approval for the end payor plaintiffs on that date as well.

THE COURT: The same date?

MR. W. REISS: The same date, yes.

THE COURT: So December 10th will be a big date. Do we have a time specifically, Molly?

MR. RAITER: 10:00 a.m.

THE COURT: 10:00 a.m., everything is 10:00 a.m. Okay. We will start all of them together. We have scheduled them all for 10:00 a.m., and we will just proceed. We may be able to group some, like we are going to group some today.

MR. POTERE: Okay. Thank you, Your Honor.

THE COURT: All right. Thank you.

All right. Status of scheduling orders. I'm going back to the agenda on 2E, status of scheduling orders.

MR. W. REISS: Good morning, again. Will Reiss for the end payor plaintiffs.

The only scheduling order that is relevant for us is the exhaust systems case, and Your Honor entered that recently.

THE COURT: We did that.

MR. W. REISS: We are negotiating, now, a number of protocols, the ESI stipulation, protective order, and a few other protocols. Those will be submitted, I would suspect, very imminently.

THE COURT: Okay.

MR. S. REISS: Thank you.

THE COURT: Very good. Thank you. Anyone else? Mr. Hansel?

MR. HANSEL: Your Honor, Greg Hansel, for the direct purchasers.

We've been coordinating with the end payors on the exhaust systems case with Bosal, on scheduling. And then there are some other scheduling orders we have been working on with some of the remaining defendants in cases that are ready to be litigated. And then there are other cases that are on appeal, that are not ready to do scheduling orders. But we are moving forward on all the ones that are ready.

THE COURT: Okay. There are no problems that you foresee on the scheduling orders?

MR. HANSEL: There have been no problems that would justify coming to you today, but if there are, we will let you know.

THE COURT: Okay.

MR. HANSEL: Thank you.

THE COURT: Thank you. All right. The next item is the next status conference, and we are trying to set these ahead. We had some problems with February, so I am suggesting March 18th, which is a Wednesday, so you don't have to worry about immigration. Okay. So that's a little bit aways, but we have a number of hearings before that. And obviously, if any of you come up with anything you need before that date, please just call and we will schedule it.

All right. On the schedule, we have done number 6A-1.

Now, B, C, D and E are all motions for final approval of proposed settlements and for attorneys fees. What I would like to do is give you each an opportunity to put your settlement on the -- proposed settlement on the record, but I'm not going to rule -- I'm going to rule as a group at the end, rather than reading everything four times. Okay. I hope it works. We've gone through this enough times that I think we know where we are going without doing that, but for purposes of the record, we need to proceed.

Okay. So let's start with the alternators. Is

anybody going to argue for the alternators?

MR. KANNER: Your Honor, good morning. Steve Kanner on behalf of the direct purchaser plaintiffs.

THE COURT: Good morning, Mr. Kanner.

MR. KANNER: We are thinking along the same lines in terms of how to efficiently proceed with these and --

THE COURT: Do you have a different way of proceeding?

MR. KANNER: No, no. In fact, I was going to suggest that if it works for the Court, that I would do all four of the motions for final approval --

THE COURT: Oh, wonderful.

MR. KANNER: -- seriatim, and then Mr. Hansel can do the responsive motions for attorneys fees, after those.

THE COURT: Attorney fees. Okay. I think that would work.

MR. KANNER: And in between, which, obviously, you would either approve or not approve and --

THE COURT: Yeah -- well, actually I'm going to do it all at the end, so don't worry about it. Go ahead.

MR. KANNER: Thanks, Your Honor.

THE COURT: So you are on alternators, radiators, starters and fuel injection systems?

MR. KANNER: Slightly different order; I'm going to take fuel injection systems, if I can, before starters.

THE COURT: Fuel injection first. Okay.

MR. KANNER: Very well, Your Honor. Again, Steve Kanner on behalf of direct purchaser plaintiffs.

We have four settlements today. Those settlements would be alternators, and those are with Mitsubishi Electric, HIAMS, which is the Hitachi defendants, and DENSO, and a proposed plan of distribution for settlement funds.

Next I will be addressing radiators, which includes settlements with Mitsuba, DENSO, Calsonic and T. Rad, and, again, proposed plans for distribution of settlement funds.

The third series of settlements will be on fuel injection systems, and that includes settlements with Mitsubishi Electric, HIAMS, Mitsuba and DENSO.

And the last one will be for starters, which includes Mitsubishi, HIAMS, Mitsuba and DENSO.

With respect to the first of those, and that would be the alternators litigation, the direct purchaser alternators litigation began with initial Complaints filed in May of 2015. We had an additional Complaint in October of 2015. The second Complaint added additional class representatives, and also named Mitsuba and Bosch as defendants. Each Complaint alleged that the defendants conspired to raise, fix, maintain and stabilize prices, and other related conduct, in violation of the United States antitrust laws.

The Court previously appointed the four firms here today as defendants -- as direct purchaser plaintiffs' counsel, and we continue to serve in that capacity.

And before I forget, Mr. Fink's firm, of course, has been designated as liaison counsel.

THE COURT: Look at how long we have been here, he's grown a beard.

MR. KANNER: Too many things that can be said.

THE COURT: Right.

MR. KANNER: After extensive discovery, series of mediations and negotiations, the DPPs filed our motions to approve the first wave of settlements with Mitsuba Electric in the amount of $7,295,825, and the Hitachi defendants, HIAMS, in the amount $2,210,769. Those settlements were preliminarily approved on September 24th of 2018.

The last settlement was with DENSO, in the amount of $100,000, which Your Honor granted preliminary approval of on April 24th, and as amended on May 23rd.

Total settlements is $9,606,594.

Let's talk about the terms of the agreements. Cooperation was certainly one of the most important terms. Each of the settlement agreements list the nature and forms of the cooperation for the respective defendant, which generally included production of documents and data not otherwise produced, assistance in understanding those

materials, declarations and affidavits of relevant witnesses, and proffers by defendants' attorneys.

Counsel believed that this cooperation enhanced dramatically the prosecution of the then remaining defendants, and the conclusion of the alternators case.

The next series of comments I'm going to make, Your Honor, relate to fair, reasonable and adequate, as with cooperation. And I would suggest, Your Honor, that in the next three presentations, if it please the Court, I can incorporate those comments by reference, rather than reading them through again.

THE COURT: You may.

MR. KANNER: Thank you, Your Honor.

With respect to fair, reasonable and adequate, the settlements before you today were each obtained through the diligence and hard work of counsel on both sides of the equation. In each case, the negotiations were, indeed, at arms length, by experienced counsel making decisions, recognizing the inherent uncertainties of law and facts with the related risks and costs of this highly-complex litigation.

Plaintiffs' counsel determined, in each case, that the dollar value, coupled with the defendants' cooperation, provided ample justification to enter the settlements.

In the course of each of these litigations -- and

this applies for the next three as well -- hundreds of thousands of documents were produced by defendants and the class representatives. Those were all reviewed and analyzed and put into databases. Add to those, multiple interviews with potential witnesses that were provided by defendants pursuant to the cooperation clauses, as well as detailed evidentiary proffers by the earliest settling defendants.

Accordingly, Your Honor, we do believe that it is appropriate for you to conclude that counsels' decision to reach these settlements was well founded and falls well within the range of reasonableness.

With respect to the notice of settlement. Following preliminary approval by Your Honor on June 27th of this year, 2,240 individual copies of the notice of proposed settlement were mailed to potential settlement class members identified by defendants.

On July 1st, pursuant to Your Honor's direction, a summary notice of proposed settlement with today's hearing date was published in one edition of the Automotive News and posted on its digital website, autonews.com, for a 21-day period. Additionally, an informational press release of the settlement was issued in PR Newswire's Auto Wire, which is a specific press release that targeted the auto industry trade publication.

Copies of the notice were and are posted online at

antitrustlitigation.com. The declaration of Ms. Angie Birdsell, who was the product manager of our settlement administrator, Epiq Class Action and Claims Solutions, is attached as Exhibit 1 to the settlement papers produced to Your Honor.

The -- it also includes settlement counsels' report on dissemination of notice of proposed settlements, and they reflect, as of September 13th, 2019, there were 3,725 page views to the website, and 825 unique visits to this site.

Finally, counsel for both settling -- for each of the settling defendants have advised us that they have fulfilled their obligations under CAFA, they disseminated the requisite notice to the appropriate federal and state officials on August 17th, 2018, for both Mitsubishi Electric and HIAMS, and on April 11th, 2019 for DENSO.

As we discussed earlier, the consideration for settlement consisted of two primary elements. The first are the amounts, and as I described before, it is $9,606,594. And I'm pleased to say there was no reductions in the total, based on opt-outs. The second material element, as we discussed, was cooperation, and it's -- the nature of the cooperation was described in detail on pages 4 and 5 in the motion.

Let's talk about requests for exclusion, briefly. As the Court knows, the largest members of the class are

sophisticated OEMs represented by highly-competent inside and outside counsel. Here the class members included OEMs and a large number of companies in the auto supply chain.

As of September 13th, 2019, Epiq received 16 requests for exclusion from the DENSO settlement, seven from the HIAMS settlement, and 113 from the Mitsubishi Electric settlement.

THE COURT: What does that mean for these specific --

MR. KANNER: Well, it means that those -- it can mean a number of things. Generally, it means those companies have made other arrangements with the defendants. Sometimes they take the form of payments, sometimes they take the form of discounts or future trade consideration. That is generally the case. Others -- some very, very small entities just don't want to have anything to do with it.

In this case, it didn't have any impact on the settlement number, which is, I think, perhaps the most important issue.

THE COURT: Okay. Thank you.

MR. KANNER: And finally, there are no objections by any of the class members to the settlement as received by either counsel or the settlement administrator.

So I would conclude with this particular issue, that the direct purchaser plaintiffs obviously believe that

their request for final approval of the settlement have met the requirements of Rule 23, in terms of commonality, numerosity, typicality and adequacy.

We believe the settlements are fair, reasonable and adequate. And we submit that the class' interest in this case are served by orders of final approval for these settlements today and the proposed plan for distribution of settlement funds, which are attached to our motions.

And if I can, Your Honor, I will just move right to the next one?

THE COURT: Yes, go on.

MR. KANNER: We are going to be discussing radiators now.

THE COURT: Okay.

MR. KANNER: The DPP radiators litigation. The DPP radiators litigation began with our initial Complaints filed relatively recently, in September of 2017. In the history of that case, that's a short time. And we alleged, of course, again, that the defendants conspired to fix, maintain, stabilize prices, and other related conduct, in violation of the United States antitrust laws.

After extensive discovery and a series of mediations and negotiations, the direct purchaser plaintiffs reached settlement agreements with, firstly, Mitsuba on November 5th of 2018, in the amount of $2,060,956. We pushed

for every last dollar.

We settled with DENSO on April 26th, 2019, in the amount of $100,000.

And we settled with Calsonic on February 28th of 2019, in the amount of $1,980,000.

And finally, with T. Rad, in the amount of $2,100,000.

Those settlements were preliminary approved -- preliminarily approved by Your Honor on September 24th of 2018.

And for reference purposes, the total of those settlements is $6,240,956.

As we set forth on page 4 of the notice, the Mitsubishi -- Mitsuba, excuse me, Calsonic and the T. Rad settlements were subject to potential recission, based on request for exclusion timely filed. That was not triggered in this case. There was no impact.

If I can incorporate my references -- by reference, the argument that I made to the previous discussion for the cooperation element and the value of it, and I would ask Your Honor for the same privilege with respect to the argument supporting fair, reasonableness and adequacy?

THE COURT: Yes.

MR. KANNER: With respect to the notice of settlement. Following preliminary approval, we had 492

individual copies of the notice of proposed settlement that were mailed to potential class members identified by the defendants. On July 1st of this year, pursuant to the Court's direction, a summary notice of proposed settlement, with today's hearing date, was published in one edition of the Automotive News and posted on its digital autonews.com website.

Additionally, copies of the notice were and are posted online at the direct purchaser plaintiffs' website, that's autopartsantitrustlitigation.com.

The declaration of the project manager, the same person, Angie Birdsell, at Epiq, they're attached as Exhibit 1 to the settlement counsels' report on dissemination of notice and proposed settlements. It reflects that as of September 13th of this year, there were 2,330 page views to the website, 492 unique visits to the settlement section of the website.

And finally, as in the previous motion, the defendants have advised that they have fulfilled the terms of CAFA by disseminating requisite notice to the appropriate federal and state officials on July 2nd of this year for Mitsuba, on April 11th, 2019 for DENSO, April 26th, 2019 for Calsonic, and on June 26th of this year for DENSO.

Consideration for the settlement consisted of two parts. The first, of course, was cooperation and the

material benefits to the class. And the second, of course, were the amounts as I described before.

In terms of requests for exclusion, again, I will incorporate my previous arguments, but the numbers are the class members -- Epiq has -- as of September 13th, Epiq received seven requests for exclusion from the Mitsuba settlement, 13 from the DENSO settlement, four from Calsonic, and five from the T. Rad.

And I -- it occurs to me, I may have misspoken in the first presentation with respect to DENSO, when I said it was 113. I believe it was actually 13.

THE COURT: Is that right?

MR. KANNER: It's a typo on my part.

THE COURT: Okay.

MR. KANNER: And, again, there have been no objections by any defendants.

In short, Your Honor, direct purchaser counsel believe that the request for final approval of these three settlements before the Court today have, indeed, met the requirements of Rule 23, in terms of commonality, numerosity, typically and adequacy. We believe the settlements are fair, reasonable and adequate. And we submit the classes' interest in this case are served by orders of final approval for the radiators settlements and the proposed plan for distribution of settlement funds.

Now, obviously, in these first two motions, it resolves those cases entirely; there are no remaining defendants.

THE COURT: You may --

MR. KANNER: The third matter is the fuel injection systems case, Your Honor.

We began litigation with an initial Complaint filed in May of 2015, and alleged that defendants, again, conspired to fix -- to raise, fix, maintain and stabilize prices, and other coordinated, related conduct for these products, in the U.S., in violation of U.S. antitrust laws.

Again, shortening the history section, I will conclude by saying that after extensive discovery, lengthy series of mediations and negotiations, the DPPs reached settlement agreements with, firstly, Mitsubishi Electric on March 12th, 2018, in the amount of $2,123,810.

THE COURT: Wait minute.

MR. KANNER: $2,123,810.

THE COURT: Is that for Mitsuba?

MR. KANNER: That's for Mitsubishi Electric.

THE COURT: I have that down differently, so -- it is our error, not your error.

MR. KANNER: I believe the record shows it is $2,123,810.

THE COURT: Okay.

MR. KANNER: With HIAMS for $7,356,923.

THE COURT: Wait a minute. Say that again. HIAMS is --

MR. KANNER: HIAMS is Hitachi. That took place on May 14th of 2018, in the amount, again, of $7,356,923.

We settled with Mitsuba in the amount of $527 -- I'm sorry, $529,716, and with DENSO in the amount of $100,000.

THE COURT: Okay.

MR. KANNER: Your Honor granted preliminary approval of the first two settlements on September 25th, 2018. The Mitsubishi settlement was approved on -- preliminarily approved on March 7th of this year, followed by the DENSO settlement, as amended, on May 23rd of this year.

The total value of the settlements was $10,110,449.

Once again, on page 4 of the notice, we indicated that the Mitsubishi Electric settlement was subject to recission based on requests for exclusions timely filed, and, again, that was not triggered in this case.

Additionally, Mitsubishi Electric, Hitachi, HIAMS, and Mitsuba and DENSO agreed to cooperate with the prosecution of the remaining defendants, and those include Aisin, Mikuni and Keihin.

I would again ask, Your Honor, if I could

incorporate by reference the previous discussions with respect to cooperation, and with respect to the argument that the matters are fair, adequate and reasonable?

THE COURT: You may.

MR. KANNER: Thank you.

Let's talk about the notice for a minute. Following the preliminary approval, 1,090 individual copies of the notice of proposed settlement were mailed to potential settlement class members identified by the defendants.

On July 1st of this year, pursuant to your direction, a summary notice of proposed settlement with today's hearing date was published in one edition of the Automotive News, and posted on its digital website, autonews.com, for three weeks. An information press release was also issued on the same day, via PR Newswire's Auto Wire.

Copies of notice were and are posted online at autopartslitigation.com.

The declaration of Angie Birdsell, again, that's the product -- she was the product manager at Epiq Class Action, our settlement administrator, is attached as Exhibit 1 to our report for dissemination of notice and proposed settlements. It reflects, as of September 13th of this year, there were 485 page views on the website, and 212 unique visits.

Finally, counsel for the settling defendants, as in

the previous case, have advised us that they have fulfilled their obligations under CAFA by disseminating requisite notice to the appropriate federal and state officials on July 10th, 2018 for Mitsubishi Electric, HIAMS on July 3rd of 2018, Mitsuba on June 21st, 2019, and DENSO on April 11th of 2019.

So, again, the primary components for the resolution of this case were the settlement amounts, which I have described, and, of course, the cooperation element.

THE COURT: All right.

MR. KANNER: With respect to exclusion, the class members who include, again, large OEMs and companies in the supply chain. As of September 13th, 2019, Epiq received five requests for exclusion from the Mitsuba settlement, 11 from the DENSO settlement, four from the HIAMS settlement, that's Hitachi, and seven from the Mitsubishi Electric settlement.

Finally, the class has indicated its approval of the settlement by lack and the absence of any objections.

So concluding, Your Honor, direct purchaser counsel believe that the requests for final approval of these three settlements before the Court have met the requirements for Rule 23, in terms of commonality, numerosity, typicality and adequacy.

We firmly believe that the settlements are fair, reasonable and adequate, and submit that the class' interest

in this case, as with the other two motions, are served by the orders of -- by orders of final approval for the fuel injection systems case.

THE COURT: All right. Starters.

MR. KANNER: Final argument.

For starters, the DPP starters litigation began with an initial Complaint filed in 2014, and made the same allegations as I have described in previous motions.

After extensive discovery, and a lengthy series of mediations and negotiations, the direct purchaser plaintiffs reached settlement agreements with Mitsubishi Electric in the amount of $6,754,285, with HIAMS in the amount of $1,368,462, with Mitsuba in the amount of $2,642,257, and with DENSO in the amount of $100,000.

Your Honor granted preliminary approval of the first two settlements on September 18th, 2018, of the Mitsuba settlements on April 4th of this year, and the DENSO settlement on May 23rd of this year.

The total value of these settlements is $10,865,004.

I would also add that, in addition to the cooperation, Mitsubishi Electric, Hitachi and Mitsuba are cooperating and prosecuting in -- and helping us prosecute the remaining defendants, which, at this point, is Bosch.

Again, Your Honor, with your permission, I will

incorporate by reference the previous arguments on cooperation and on fair, adequate and reasonableness?

THE COURT: All right.

MR. KANNER: Thank you.

With respect to the notice, following Your Honor's preliminary approval, 400 -- strike that -- 4,665 individual notices of the proposed settlement were mailed out to potential class members.

On June 27th of this year, pursuant to this Court's direction, a summary notice of the proposed settlement, with our hearing date today, was published in one edition of the Automotive News, and posted on its digital website, autonews.com, for 21 days, as well as an informational press release via PR Newswire entity called Auto Wire.

THE COURT: Can I ask you, on the starters, I was a little bit confused when I read it. There was 4,665 claims mailed?

MR. KANNER: Individual copies of the claim forms that were mailed to various entities.

THE COURT: Okay. And there were 2,132 returned?

MR. KANNER: Correct.

THE COURT: And then remailed was 3,317.

MR. KANNER: As we learned more and corrected -- the databases -- unfortunately, the materials presented by defendants was generally adequate and accurate,

but we found that many of the mailing addresses somehow went to branch offices or subentities. They did not go to the appropriate entities in many cases. When we corrected those, they were remailed, in many cases, with success.

THE COURT: Okay. And I see for that, there were less than 700 that were undeliverable, which --

MR. KANNER: Correct.

THE COURT: Which is good. Thank you. I just wanted to clarify that.

MR. KANNER: No, not at all. It can be confusing. In some cases, the lists were far more useful and we had far less returns. Other cases, like this, we had a fair amount of returns, but were able to correct that.

THE COURT: Okay.

MR. KANNER: Copies of the notice were posted on our online websites at antitrustlitigation.com.

The declaration of Angie Birdsell, who is again the product manager at Epiq Class Action and Claims Solution, is attached as Exhibit 1 of settlement counsels' report of dissemination of notice and proposed settlements.

It reflects that as of September 13th of this year, we had 502 page views, 158 unique visits to the settlement website.

Again, the defendants' counsel have advised us that they have satisfied CAFA by disseminating requisite notice to

the appropriate federal and state officials on July 10th, 2018 for Mitsubishi Electric, for HIAMS on July 3rd, 2018, and Mitsuba on June 21st, 2019, and DENSO on April 11th of 2019.

We have discussed the true primary components of the settlement. First, the amount of $10,865,004, and the second, of course, being the cooperation by the settling defendants.

In terms of requests for exclusion, as of September 13th, Epiq received eight requests for exclusion by the Mitsuba settlement -- for the Mitsuba settlement, 14 for the DENSO settlement, five from the HIAMS, and 11 from the Mitsubishi Electric settlement.

And, of course, again, Your Honor, there have been no objections mentioned by any of the class members.

In short, Your Honor, direct purchaser counsel believe, for the fourth time today, that our requests for final approval of the settlements before the Court have met the requirements of Rule 23, in terms of commonality, numerosity, typicality and adequacy. We believe that the settlements are fair, reasonable and adequate, and submit that the class' interest in this case are served by the order of final approval for the starters settlement.

THE COURT: All right.

MR. KANNER: Sorry for the lengthy approach, Your

Honor.

THE COURT: You don't have any others?

MR. KANNER: We will, shortly.

THE COURT: Yes. Okay. Let me rule on these four, in terms of the settlements, first of all. And as I said, I am also grouping them -- you may be seated -- I'm also grouping them together.

MR. KANNER: Thank you, Your Honor.

THE COURT: We have the motion for final approval of these components parts, alternators, radiators, starters and fuel injection systems, with various groups of defendants. And the Court is also asked to certify, for settlement purposes, the classes that I've previously conditionally approved.

The lawsuits on behalf of the direct purchasers in the various component parts all allege that defendants conspired to raise, fix, maintain and stabilize prices, rig bids, and allocate the supply of component parts sold here in the United States, in violation of the federal antitrust law.

Moreover, plaintiffs and other direct purchasers were injured by paying more for those products than they would have paid in the absence of the alleged illegal conduct.

The Court enters orders pre -- entered orders preliminarily approving settlements with the various

defendants. I'm going to read into the record the total amount, but not the individual defendants. The Court accepts what counsel has indicated as the correct amounts.

And I would indicate that when I stopped you, I had a wrong note on the parts, so I do have exactly the same numbers that you have, thank goodness.

All right. The alternators total settlement was $9,606,594. The radiators total settlement was $6,240,956.

Let me go back, because I do want to say that the parties in the alternators were Mitsubishi Electric, HIAMS, and DENSO. And in radiators, it was Mitsuba, DENSO, Calsonic and T. Rad.

For starters, the total settlement -- I think this is a little bit out of order, but it is the way I made my notes, so that's the way I'm going to go. It's $10,865,004, and the defendants in that one were Mitsubishi, HIAMS, Mitsuba and DENSO.

The settlement for fuel injection systems was $10,110,449, and, again, those defendants were Mitsubishi Electric, HIAMS, DENSO and Mitsuba.

Although some of the agreements were subject to recission based upon the number of valid and timely requests for exclusions received, the level was not reached in any of the component part cases, so this is the amount -- the total

amount of the settlements.

The amendment to Rule 23, effective in December of last year, requires that the parties must provide the Court with information sufficient to enable it to determine whether to give notice of a proposed settlement to the class. Notice is justified by the parties showing that the Court will likely be able to approve the proposal, certify the class -- and certify the class for purposes of judgment on the proposal.

The Court here authorized the direct purchaser plaintiffs to disseminate notice of all -- or I should say, of each these four proposed settlements, as well as the fair -- notice of the fairness hearing, and related matters to the settlement class.

Counsel went over the number of claims. I'm not going to go over all of those specifics, except that the general number of forms mailed for the alternators was 2,240.

I do want to say that the undeliverables were down to 334. I was impressed with the number of undeliverables in each of these cases, so I would like to put that on the record.

The radiators, the notices mailed were 492, and the undeliverables were just 41.

For the starters, there were 4,665 claims mailed initially, that number changed as we discussed, but the

undeliverables 698.

The fuel injection systems, the number of claim forms and notices mailed were 1,090, with only 139 that were undeliverable.

So the summary notices for the settlements also were published in Automotive News. Additionally, there was an online banner notice that appeared over a 21-day period on autonews.com, which I understand is a digital version of the Automotive News, and an informational press release was issued nationwide, via PR Newswire's Auto Wire, which targets auto industry trade publications. And finally, a copy of the notice was, and I assume remains, online, on our auto parts antitrust litigation site.

The -- going on to the exclusions in these various prices -- various cases which defendant has put on the record the number, and the Court accepts all of those numbers for each of them. I followed with you, and I have the same numbers from your papers.

All right. The first issue is whether the Court should approve this plan of allocation. The notice sent to the potential members described the plan recommended by the settlement class counsel for distribution of the funds to members who filed timely and proper claim forms. The proposed distribution provides for the various settlement fund, which accrued interest, to be allocated among the

approved claimants according to the amounts of their recognized transaction, after the payment of attorney fees, litigation and administration costs. We are going to get into those in the next motion.

This Court and numerous others have approved similar pro rata distribution plans in the automotive parts litigation, and I will do so here.

The questions raised is, is the proposed settlement fair, reasonable and adequate? Counsel went over that. The settlement, in the Court's opinion, reflects a reasonable compromise, in light of the liability, damages and procedural uncertainties facing the parties.

Rule 23(e) requires court approval of a proposed settlement, and it must be fair, reasonable and adequate. The 2018 amendments set forth a list of factors for the Court to consider, and they are as follows, and I will discuss each of them.

One is the adequacy of representation and arms length negotiations. Here, considerations include the experience and expertise of plaintiffs' counsel, the quantum of information available to counsel negotiating the settlement, the stage of litigation, the amount of discovery taken, the pendency of other litigation concerning the subject matter, the length of negotiations, and whether a mediator or other neutral facilitator was used, the manner of

negotiation, whether attorney fees were negotiated, and other factors demonstrate the fairness.

I do find that these factors are satisfied as to each of the four component parts.

Plaintiffs share the same interest as the settlement class. Class counsel has extensive experience in handling cases in this antitrust area, and they have represented the direct purchaser plaintiffs from the inception of the litigation, and negotiated the settlement.

Counsels' judgment is that the settlement is in the best interest of the class, and that judgment, in my opinion, is entitled to significant weight. As I have indicated before, I think that class counsel -- I want to say all counsel in this case have just done a tremendous job, and are highly, highly experienced and knowledgeable in this area.

Discovery and available information allowed counsel to evaluate the strengths and weaknesses of the claims and defenses. The information allowed evaluation of the legal case and the potential value of the promised cooperation, which was a significant factor in each of these cases, along with the settlement amount.

Counsel believes the settlement is fair, reasonable and in the best interest of the settlement class.

The settlement provides cash payments, and, as indicated, substantial cooperation.

In evaluating the proposed class settlement, the Court does not decide the merits of the case or resolve unsettled legal questions for two reasons. First, the object of settlement is to avoid the determination of contested issues, so the approval process should not be converted into an abbreviated trial on the merits. And, second, being a preferred means of dispute resolution, there's a strong presumption by courts in favor of settlement. And when considering the adequacy of the relief to the class in determining the fairness of a class action, the Court assesses it with regard to a range of reasonableness, which recognizes the uncertainties of law and fact in any particular case.

The risk must be weighed against the settlement consideration. And here, the certainty of these cash payments, together with the cooperation by each of these four defendants, strongly militates towards approval of the settlement.

While plaintiffs are optimistic about the likelihood of ultimate success in this case, it is certainly not certain. As this Court has previously noted, success is not guaranteed, even in those instances where settling defendant has pleaded guilty in a criminal proceeding brought by the Department of Justice, but that is because, among other things, the DOJ is not required to prove class-wide

impact or damages, both of which require complex and expensive expert analysis, and the outcome of that is uncertain.

The case here does not present any difficulties in identifying claimants or distributing settlement proceeds consistent with the practice previously approved in the auto part litigation direct purchaser settlements. The settlement class counsel intend to distribute the net settlement funds pro rata to approved claimants.

Claims will be processed using a settlement claims administrator to review the forms, to assist settlement class counsel, and to make recommendations to the Court concerning the disposition of those, and to mail checks to approved claimants for their pro rata share.

Settlement class counsel are also seeking attorney fees, and we will get to that in the next motion.

Class members will be treated equitably, relative to each other, in terms of their eligibility for a pro rata share of the funds, and their right to opt out of the settlement classes. Likewise, each class member gives the same releases.

Now, there are incentive awards, and I believe those are also going to be covered in the next motion. The Court notes that those are awards for the efforts that lead plaintiff to take on the class are recognized, and we'll

discuss it when we -- when we get there.

Certainly, the settlement of complex litigation, such as this, conserves judicial resources, because these suits are notoriously difficult and unpredictable. And plaintiffs submit that there is no counter veiling public interest that provides a reason to disprove the proposed settlement, and this factor supports final approval.

And I would add to that, of course, that there has been no objections to any of these settlements.

In sum, the result appears fair and reasonable in light of the expected duration and uncertainty of continued litigation, and the claims here are complex, and the issues are numerous.

The negotiations involved arms length by experienced counsel, and the Court therefore accords counsels' assessment of fairness.

The next issue is whether the notice was proper. And we know, under 23(e)(1), the Court must direct notice in a reasonable manner to all members. It does not require actual notice, but -- nor does it require individual mailed notice, but here, all of that was done, so there is no need to really go into that.

The Court, as indicated when I read the numbers, find that -- finds that notice here has been appropriate, and I think actually exceeds most of the cases I have seen, in

terms of the folks who have not been notified because mail has been returned.

The last question is, should the settlement class be certified pursuant to Rule 23? And the Court has looked at a number of the factors, and finds that it should be.

There is numerosity. Again, we went through the numbers of entities: Alternators, 2,240; radiators, 492; starters, 4,665; and fuel injection systems, 1,090. And these are all distributed throughout the United States, so that makes joinder even -- I mean, it makes it so much more practical to do it as a class action.

A class action, next, must implicate questions of law or fact common to the question. A certifiable class claim must arise out of the same legal or remedial theory. Antitrust price-fixing conspiracy cases, by their nature, deal with common legal and factual questions about the existence, scope and effect of the alleged conspiracy.

Here, direct purchasers identify the main issue common to the class, and that is whether settling defendants engaged in a combination and conspiracy amongst themselves to fix, raise, maintain or stabilize the price of component parts sold in the United States.

Other common questions noted by the Court in other motions of this sort, include the duration of the illegal contract, combination or conspiracy, and whether non-settling

defendants' conduct resulted in an unlawful overcharge of these prices. The Court finds that commonality requirement is met.

Next is typicality. To satisfy this third prerequisite, the claims of the representative parties must be typical of the claims of the class. A proposed class representative can satisfy the prerequisite if his or her claim arises from the same event, or practice, or course of conduct that gives rise to the claim of other class members, or the claims are based on the same legal theory.

The typicality requirement may be satisfied if there are factual distinctions -- even if there are factual distinctions between the claims of the named parties.

Here, typicality is satisfied because the injuries arise from the same wrong that is allegedly injuring the class as a whole. They were all victims of the same conspiracy.

Next is adequacy of representation. Here, the Court must find that the representative parties will fairly and adequately protect the interest of the class. This is a two-pronged inquiry. One relates to the adequacy of the named plaintiffs' representation of the class, and requires there be no conflicts between the interest of the representative and those of the class in general. And the other, of course, relates to the adequacy of class counsels'

representation.

Here, the DPP representatives will fairly and adequately protect the interest of the class because they have the same interest, and the distribution plans do not give preferential treatment to the named plaintiffs, though they are asking for awards.

In addition, class counsel is qualified, experienced and able to conduct the litigation.

Accordingly, the Court finds that the individual plaintiffs and the attorneys adequately represent the classes.

Because the direct purchasers meet the requirements of Rule 23(a), the Court turns to the additional requirement of 23(b)(3), that class plaintiffs demonstrate that common questions predominate over questions affecting only individual members, and that class resolution is superior.

Here, the claims involve a global conspiracy from which all proposed settlement class members' injuries arise. This conspiracy theory suggests the existence of shared issues relative to the scope of the conspiracy, the market impact, the aggregate amount of damages suffered by the class as a result of the violations.

Evidence that shows a violation as to one settlement class member is common to the class and will provide the violation to all.

The anticompetitive conduct is not dependent on the separate conduct of the individual settlement class members.

Finally, a class action is a superior method to adjudicate these claims, and the MDL has been centralized in this Court. The interest of settlement class members in individually controlling the prosecution of separate claims is outweighed by the efficiency of the class mechanism.

Certainly, litigating the same issues in individual suits would unduly burden the Court, and I would say, would last through many courts' lifetime.

Therefore, the proposed settlement, the Court finds that the prerequisites for it, pursuant to Rule 23 of Federal Rules of Civil Procedure, have been met, and I hereby certify the class for direct purchaser plaintiffs.

So the Court grants final approval of the settlement and certifies the class members -- the classes for purposes of settlement, and approves the plan of distribution for all four of these settlements -- or these parts -- not four settlements, because there are more -- four parts.

All right. I think that covers it.

MR. KANNER: Thank you, Your Honor.

THE COURT: Now, with that, let's go on to attorney fees.

MR. HANSEL: May it please the Court, Your Honor, Greg Hansel for the direct purchaser plaintiffs.

THE COURT: Yes, Mr. Hansel.

MR. HANSEL: All four of these parts, the direct purchaser plaintiffs filed the first Complaint in 2013, six years ago. Sometimes our clients joke with us, you know, that we are working for free. And we do have to tell them that we will ask the Court for a fee, but they do take comfort in the idea that a judge is deciding our fee, that we just can't take it. So we do discuss that with our clients, and frankly, I think they are very comfortable with the idea that a court is deciding the attorney fee.

So I will try to be as streamlined in my presentation as my colleague, Mr. Kanner, was.

I will start with alternators. The settlements with the three alternators settling defendants, Hitachi or HIAMS, Mitsubishi Electric, which we sometimes call MELCO, and DENSO, total $9,606,594.

The Court has just reviewed the settlement notice facts, so I will not repeat all of the facts about settlement notices, but I will highlight that with respect to attorney fees, expenses and incentive or service awards, the notice is of particular importance because it provides notice and an opportunity to be heard to all class members with respect to the fact that class counsel will request -- and in each of the four cases, we said will request up to 30 percent attorney fees, and we are, indeed, requesting 30 percent.

The notice also states that counsel will request reimbursement of litigation expenses and settlement administration and notice expenses, and refers to service awards in the cases where we intended to request service awards, which are two out of the four parts today, we are requesting service awards. The others we will defer to a later date.

So the Court is familiar with the notice and --

THE COURT: Why are you deferring those two? I'm just curious.

MR. HANSEL: Well, it is because we have additional negotiations or mediations occurring in those parts. The settlement funds for existing settlements are in the bank or otherwise subject to the terms of settlement agreements as to the timing of payment, so the settlement funds will not be distributed yet.

As the Court is aware, we are trying to be as efficient as possible by combining settlements for approval and also for the claims process and the attorney fees and the incentive awards. So in the judgment of our group, it made sense to request the service awards in two of the parts today, and we intend to request service awards in the other two, later.

THE COURT: Okay.

MR. HANSEL: So what I have said applies to

alternators, starters, fuel injunction systems and radiators.

The settlement amounts -- I mentioned the settlement amount in the alternators case. In the starters case, the total settlements are $10,865,004, with the four defendants in that case; Mitsubishi, HIAMS, DENSO and Mitsuba.

In fuel injection systems, the total amount of the settlements is $10,110,449, with four defendants; Mitsubishi, Hitachi or HIAMS, Mitsuba and DENSO.

And in the radiators case, the total amount of the four settlements is $6,240,956, with Mitsuba, DENSO, Calsonic and T. Rad, those four defendant groups.

I will say that the opt-outs -- the low number of opt-outs relative to the number of class members is also an indication that the attorneys fees requested are reasonable, and the -- and in the cases where it applies, that the service awards to be requested are reasonable, and the absence of any objections to the attorney fees, expense reimbursement requests and service awards. Those are a common element in all of these settlements, that there have been no objections to any of those planned requests.

So in each of the four parts, plaintiffs' counsel requests 30 percent of the proceeds of the settlement funds. And I want underscore this point, because the Court has been clear in the past, this is after deducting litigation costs

and expenses. We are not requesting the 30 percent on amounts out of these settlements that are devoted to paying litigation expenses, in this instance.

So we would support this request by -- by stating that each of the settlements is fair, reasonable and adequate, and, indeed, the Court has just ruled from the bench that Your Honor is approving the settlements and certifying the settlement classes.

The reaction of the class members indicates broad support, and that the indicators of that are the low opt-outs and the absence of objections.

In this MDL, the Court has consistently applied the percentage of the fund approach. I will get into that a little bit more, including in the direct purchaser cases where the Court has awarded fees before.

The benefits of that approach are several, as the Court has noted and the Sixth Circuit has held. The percentage of the fund approach conserves judicial resources. It eliminates disputes about the reasonableness of rates and hours. It aligns the interests of counsel with the class. And it is typical in this type of litigation.

Thirty percent, the requested fee, is within the range of other class action fees awarded in the Sixth Circuit and by this Court in this MDL, including, for example, in the direct purchaser settlements with the ten or 11 defendants in

the wire harness litigation, the first part brought, the Court awarded a 30 percent fee.

This Court has actually also awarded higher fees in this MDL, from time to time, and lower fees. For example, higher fees were awarded to the automotive -- automobile dealer plaintiffs and the truck and equipment dealer plaintiffs in the wire harness case, where the Court awarded a 33.3 percent fee.

I would like to talk about what the class counsel have done to earn their fee. So we investigated the industry. And the industry is -- the automotive industry as a whole, but each one of these parts has its own industry that specializes in manufacturing and distributing the particular parts at issue here. So we studied the industries in detail.

We investigated the facts of the conspiracy. We participated in extensive cooperation, meetings and proffers, with the ACPERA applicant in each of the four parts. We drafted Complaints and other pleadings and briefing and motions. We have attended all the hearings in the case. We negotiated the terms of settlements. We have reviewed and coded and analyzed hundreds of thousands of documents -- or millions of documents, when you add them together, including, perhaps, the original group, where the documents were originally produced to or seized by the Department of

Justice, and then we received additional documents from the ACPERA applicant. We received additional documents as the settlements have occurred. We have, in each case, secured cooperation with settling defendants, which included the production of documents. So we have had massive document review and coding and analysis, both by actual humans and with the aid of computers.

We have negotiated the terms of the settlement, and oftentimes for several months after reaching a settlement in principle, in a mediation or a negotiation, we have then had to negotiate the terms of the settlement agreements which also are somewhat difficult to negotiate. And it's a slow process, going back and forth, often with overseas defendants, and it does take a long time to bring these to a conclusion.

And then there have been lots of work with the claims administrator and the notice administrator in these cases, to make the notices as effective as we believe they have been, and preparing other motions in connection with settlement.

So just turning to the factors listed by the Sixth Circuit, for example, in the *Bowling vs. Pfizer* case, 102 F.3rd 777. The Sixth Circuit announced six factors to be considered.

One is that to earn a fee, counsel must have

obtained a valuable benefit for each of the classes. In this case, the primary benefit is the cash recovery. And in those cases where there are additional defendants remaining, the cooperation is also a major benefit to the class. And, in fact, the cooperation in the ones without any more defendants left was a factor in concluding the settlements with the remaining defendants after we got the first one. So the cooperation really helps.

The value of services on an hourly basis, also referred to as the lodestar crosscheck. I will walk through that in each of the parts in a moment, but in this case, we suggest to the Court that that value confirms that the requested fee is reasonable.

Third, services were undertaken on a contingent fee basis. That's certainly the case here. There is a risk in any such case that plaintiffs' counsel will earn nothing, will recover nothing as an attorney fee, or an amount insufficient to meet the amount of time they have spent on the case, times hourly rates.

There is an important public policy, it is the fourth factor. Society has an important stake in rewarding attorneys who produce such benefits, in order to maintain an incentive to others to deter similar future conduct, and to achieve recoveries that amount to restitution for the victims. Society gains from competitive markets that are

free from collusion. And we also are a complement in the related parallel criminal proceedings, in which the Department of Justice does not purport to seek restitution for the victims. They focus on criminal penalties, prison time, fines, but they do not undertake to get compensation to the victims.

Fifth, antitrust class actions are inherently complex. I won't belabor that point. I think we can all agree on that.

And counsel on both sides are skilled and experienced, which is the sixth factor.

So turning to the lodestar crosschecks. In each of the four parts, we provided our lodestar with our original motion for attorneys fees, both in hours and dollars, and then, later in our notice reports, which were filed recently with the Court, we updated the dollars of lodestar and then recalculated the lodestar multiplier crosscheck.

So, for example, in alternators, the attorneys fee that class counsel request today, 30 percent, works out to $2,873,804.63, which is 30 percent of the settlement after costs and expenses are deducted.

At the time of the motion for fees, direct purchaser counsel had expended 2,804 hours in the alternators case, all together. That was in June, June 30th -- as of June 30th.

Since then, through August 31st, counsel have spent approximately $60,000 of additional time, and so the multiplier now -- and this is in our notice report, the multiplier as of August 31st is 2.09 times the lodestar. That is the highest of these four, and they descend after that.

And I would note that that multiplier is similar to the multiplier that the Court calculated in the occupant safety systems case in the first fee application in that case, and the Court approved.

The next part is starters. In this part, 30 percent of the fund after deducting fees -- deducting costs and expenses is $3,243,460.72.

Robert, tell me if I'm going too fast.

And at the time, that's June 30th, the number of hours was 3,937 hours. There was additional time after that, and the current multiplier is 1.6 of lodestar, that we are requesting.

Turning to fuel injection systems. The 30 percent after costs and expenses is $3,017,382.28. The number of hours as of June 30th was 4,811. The current lodestar multiplier is 1.19, so it's a little bit over the lodestar.

Turning to radiators. The 30 percent after costs and expenses is $1,853,477.05. The number of hours as of June 30th was 3,889. And with the additional time through

August 31st, the requested fee represents a negative multiplier of 0.97 times the August 31st lodestar.

THE COURT: Could you tell me again, what is the attorney fee on the fuel injection? It is 1.19, but what is the amount?

MR. HANSEL: The amount is $3,017,328.28.

THE COURT: Thank you.

MR. HANSEL: Changing the subject slightly, to allocation.

In each of the parts for all the settlements, we ask the Court authorize interim lead counsel to allocate the fee among the law firms who have contributed the work. This Court, and courts generally, have approved a joint fee application such as this, that requests a single aggregate fee award with allocations to be determined by lead counsel among the various law firms that work on the case.

Lead counsel know the most about the work that the team of firms have performed, including each other and the other firms who support the case, and who have all contributed to litigation funds to pay for the expenses, as well as contributing their time.

Those firms have generally not attended all of those hearings. We have tried to keep that very efficient. Mr. Fink is the court-appointed liaison counsel, and obviously, he's one of the preeminent firms that's working on

these cases, in addition to lead counsel, but there are other firms, as well, who have made a substantial contribution both in their skill and time and experience, as well as expenses.

THE COURT: Have there been any disputes between lead counsel and others who are allocated amounts of any import?

MR. HANSEL: Nothing that we haven't worked out. There have been a few minor -- I would say, minor disagreements or disappointments.

THE COURT: We had some at the beginning of this case.

MR. HANSEL: I beg your pardon?

THE COURT: We had a dispute in the beginning of this --

MR. HANSEL: Yes. That was more of a leadership contest, I would call it, and that was resolved. And -- but there have been no significant issues among the supporting counsel. We really try to treat everyone fairly and work out any questions that are raised.

THE COURT: Thank you.

MR. HANSEL: That's been successful. If there was a problem, I'm sure Your Honor would hear about it, and nothing has bubbled up, so --

THE COURT: Okay.

MR. HANSEL: So I will turn now to reimbursement of

litigation costs and expenses, if I may?

We have excluded some particular items that the Court has previously indicated we were not, you know, to request or receive reimbursement of those, I guess, because they are overhead like; telephone, fax, and internal copying costs are those expenses, and they are not included in these requests.

So in alternators, the expenses are $27,245.25.

In starters, $53,468.25.

In fuel injection systems, $52,508.06.

Radiators, $62,699.17.

Finally, incentive awards or service awards. In the alternators case, Your Honor, there are two proposed -- I guess, since the Court has approved the settlements, there are two class representatives of the settlement class; they are Irving Levine Automotive Distributors, Inc., in Connecticut, and All European Auto Supply, here in Michigan. We are requesting $20,000 for each of them.

And in the radiators case, there is a single class representative, Irving Levine, who did distinct work in that case, distinct from alternators and other cases. And as the only class representative carrying the ball in that case, radiators, we are requesting $25,000 incentive award for Irving Levine Automotive Distributors, Inc.

THE COURT: What, specifically, did they do? I

don't have any specific information on these two parts.

MR. HANSEL: Well, I can say they have spent an awful lot of time with me on the telephone, primarily, and with other co-counsel, for more than six years. And one thing that impresses me about their service to the class is the -- how they have sustained their attention and commitment to this case over a multi-year period. To just be willing to spend the time and attention for over six years, largely for the benefit of others, is impressive.

First of all, none of the class representatives were promised incentive awards.

But actually, to focus on the Court's question, what did they do? They assisted counsel in understanding the market, the industry. They have really a lifetime of experience in purchasing auto parts, in understanding the automotive industry and, in particular, the radiators industry and the alternators industry. They educated counsel on those industries.

We discussed with them preservation of hard copy and electronic records, and took steps to implement those preservation plans.

We worked with them on collecting documents for production to defendants, as needed, and for review. We provided them with Complaints before filing, for their review and approval. We gave them regular updates and status

reports throughout the six-year period. And then, whenever we were in a position to recommend a settlement, we would reach out to them and seek their input and hopefully their approval, and in each case, they have approved the settlements. So we --

THE COURT: Let me ask you --

MR. HANSEL: Yes.

THE COURT: -- did they have any contact with other class members? I mean, obviously, like the one Levine is the only one, but do other class members contact them to say, what do you think? Do you know that? I'm just curious.

MR. HANSEL: I think, when they -- I think, when they -- I think they see other people in their industry at meetings from time to time. We've discouraged them from talking about the case, because whenever you do that, you know, you open yourself up to being asked about that in a deposition, and there can be a waiver of privilege and things like that, so we try to avoid that. But we know -- I mean, it is public that they are doing that, and we are --

THE COURT: But they not spending -- we are not talking about -- it doesn't cost them time to relay to other class members?

MR. HANSEL: No. They are not like a clearinghouse, where they get called all the time and asked what the status is. But I think they -- they have -- since

they have done this publicly, and whenever a Complaint is filed, there are news reports, as the Court is aware, in various publications, industry publications, Automotive News, so there's some buzz, and they do get asked about it from time to time, and they tell the truth about, you know, what they are doing and why, you know. I think they do, frankly, get some pats on the back, which doesn't buy you a cup of coffee, but I think it helps them feel like they are doing the right thing.

THE COURT: Okay.

MR. HANSEL: So these incentive awards that we are requesting of $20,000 and $25,000 today are less than what the Court -- what Your Honor has awarded, for example, in wire harness, where the Court awarded $50,000 to each of seven, I believe, class representatives.

And just to conclude, there were no objections to the requested fees, expense reimbursements or incentive award requests by any of the class members, in any of the four parts, for any of the multiple defendant settlements.

We did furnish, already, to the Court, via ECF Utility, a proposed order on attorney fees, costs and incentive awards in each of the four parts. We also have hard copies, here today, of those orders and the final approval orders. If Your Honor would like, we can hand those up. And if there are any changes that the Court wishes to

make, of course we are happy to assist with those in word processing and resubmit anything to the Court.

THE COURT: Okay. Thank you.

MR. HANSEL: Thank you, Your Honor.

THE COURT: All right. The motion before the Court on each of these cases is for an award of attorney fees, litigation costs and expenses in the -- I shouldn't say in each of these cases, in each of the component parts, the four parts, and the incentive awards.

The direct purchasers asked for 30 percent of the settlement for attorney fees after deductions for reimbursement of litigation costs and expenses.

Let us discuss first the grant of attorney fees, should the Court grant this. And the Court, of course, under Rule 23(h) may award, and should award, really, reasonable attorney fees and nontaxable costs that are authorized.

The Court looks first at the expenses. And before I go to the attorney fees, the expenses, here, have been outlined by the parties and appear, from a look at them, to be reasonable. The Court does not, I should state, like some courts do, have an auditor review these expenses, which under these circumstances, I find would be an extra cost that need not be incurred, but rely on the integrity of the attorneys. I have found, certainly, throughout the years, that these are attorneys of the highest integrity, and I, therefore, in

looking at the costs, I don't question any of them. They all appear to the Court to be reasonable.

And the Court would award the unreimbursed past expenses in the alternator case of $27,245.25, the radiator case of $62,699.17, and the starters -- is the starters $53,468 or 268? I may have a typo here, and that's why I'm asking.

MR. HANSEL: 468.

THE COURT: 468?

MR. HANSEL: It is $53,468.25 --

THE COURT: All right.

MR. HANSEL: -- starters.

THE COURT: Pardon me? Did you say something else after that?

MR. HANSEL: No. That was starters.

THE COURT: All right. The Court will accept that. The fuel injection systems of $52,508.06.

As indicated, the law firms who have incurred these costs have provided documents for -- to support their costs, including travel and other expenses, and they did not include the expenses for telephone calls, faxes and internal copying.

There is no dispute that class counsel are entitled to reimbursement of all reasonable out-of-pocket litigation expenses and costs in the prosecution of claims, including those in connection with document production, consulting with

experts/consultants, travel and other litigation expenses.

So the Court does grant these, and this comes off the top of the awards -- the settlement awards.

Next, I would like to address the incentive payment to the class representatives, and I had counsel put on the record the specifics of what these persons or entities did. Certainly, their effort throughout the years to provide counsel with understanding of the automotive parts industry generally, and the parts specifically, preservation of electronic and hard copy documents, and various discussions and the other items as counsel has indicated they have done, though I don't know how much time this involved, I think it is very reasonable to offer -- to award these people and these companies -- I believe they were companies; is that correct?

MR. HANSEL: Yes.

THE COURT: For the -- let me find it. For the alternators, $20,000, and that's to two companies. And for the radiators, $25,000, and Levine is the only company involved in that. And I do think that that is a reasonable amount. I just questioned what they did because I do know or assume that most of the discovery had to do with the DOJ discovery -- or a lot of the discovery did, and so that was already there, but clearly, you could not have proceeded with these without a class member who kept you informed and did

these things you indicated that they did.

The next item is attorney fees. I think most of you know I have struggled with this attorney-fee issue as each case came along. And I do note here, as in many of the others, that one-third was the amount, I believe, that was in the notice sent to the claimants.

The Court may award reasonable attorney fees and nontaxable costs that are authorized by law or by the parties' agreement, but a claim for such award must be made by motion, which we are doing here. And the Court engages in a two-part analysis when assessing the reasonableness of a petition seeking an award for attorney fees.

The Court first determines the method of calculating the attorney fees by applying either the percentage of the fund approach or the lodestar approach. I have determined that, for me, the best method -- the most appropriate method here is the percentage of the fund award. Of course, the Court uses the lodestar method as a crosscheck to that particular method.

And I really do believe that this fund -- this percentage of the fund does avoid these conflicts that comes up, sometimes, in the reasonableness of the hours -- the hourly rate, excuse me, between counsel. When you have counsel from all over the country and different rates, it creates -- it definitely creates a conflict.

And courts also look at, you know, in that respect, in the lodestar method, the number of hours, and it requires the Court to review the number of hours that counsel puts into the record. Again, I don't have an auditor. I have listened to judges who have done this, but I find it very difficult to apply, as a practical matter, as to how much time. I mean, is it too much time that you spent four hours on a telephone conversation versus one hour; or ten hours in a settlement negotiation one day versus, you know, 20 hours? I don't know. And therefore, I think that this -- the Court is willing to accept the hours that counsel indicates and determine that lodestar, but I think the percentage is much more reasonable and fair.

I know that throughout -- well, here in Michigan anyway, and in the cases that I have read, generally percentages have been -- I don't know. I did see one as low as ten, but very common 20, 30, and 33 percent.

And the Court -- I kind of went beyond this looking at what do -- how are they handled in other cases? I know antitrust is very unique, but you do look at other cases, and what percentage, if they are taken on a percentage basis, what percentage of the final award do attorneys receive? And the 30 percent, across the board, on all different kinds of cases, seems to be a very standard number, and therefore, this Court has finally come to that conclusion. I think I

told you in the last settlement that it would be a 30 percent award.

And I did consider the factors, the factors that Counsel mentioned, and for percentage of the fund, and I think that, certainly, when we look at this, some of those factors, in looking at them individually, society's stake in awarding attorneys who produce such benefits. This is a very unique case that I don't think anybody would have -- no individual automobile owner would say I paid too much more for my car. They don't know this. In a way, it's a kind of case that is comforting to the Court, because I'm not worried about somebody getting money for their medical needs to proceed. But people are injured, even though they didn't know that they were injured economically, and if it weren't for the attorneys bringing this case, there would be no award. And if it weren't for the attorneys of exceptional experience and knowledge, such as yourself, there probably would not be such an award, so the Court considers that.

I also consider that you took this under a contingency-fee basis. And I think the interesting thing in this case is, even though we had pleas from some defendants, there were some very valid reasons why those pleas did not go into liability or may not go into liability. So this was not an open and shut case, but took work and skill. And the skill of counsel on both sides, as the Court has indicated,

is tremendous.

So I also note that there were some kinds of cases, as I went through cases, even in domestic, which absolutely blows my mind, where there is awards for good results. So they take certain percentages and then they add money to them, et cetera.

Well, I considered all of those factors, and here, clearly, the test of the criteria are met. The results achieved are excellent. There is a strong national interest in antitrust informant to vindicate the public policy -- antitrust enforcement, excuse me. And class counsel have worked on a contingent basis, putting it -- also bearing expenses that are quite extreme, without any indication that they would be reimbursed for those.

So the Court is, in fact, awarding the 30 percent. I have looked at the lodestar, and the lodestar, as counsel just went through, now the highest is 2.09 and lowest was a negative of 0.90 (sic). So those lodestars are all within the realm of allowable by case law.

So, in sum, the Court grants the motion for the award of attorney fees and reimbursement of litigation expenses. The Court would also authorize the lead counsel to determine the allocation of these fees amongst other counsel.

And I would like to clarify one thing about the -- whether the service awards to the class reps are

deducted before or after the attorney fees. I would say to you that I think the -- it seems to be that the next -- that the most logical thing is that these fees -- these service awards come out of the back fees -- excuse me, the net settlement to the clients. So they don't come out, as the costs do, from the settlement amount. Do you understand what I'm saying, or no?

MR. HANSEL: Not really, Your Honor.

THE COURT: Okay. Let me go over that. You take out -- from the total settlement, you take out your costs, and then you determine the attorney fees, right?

MR. HANSEL: Correct.

THE COURT: That being one-third, and so that attorney fee is yours, totally, and these awards to the individual plaintiffs, the named plaintiffs, come out of the amount that all of the plaintiffs are getting, so you --

MR. HANSEL: Understood, Your Honor, yes.

THE COURT: Okay. Is that will clear?

MR. HANSEL: Yes.

THE COURT: Because I just thought of that and went through it, and I didn't want you to think of it as an expense and, therefore, take it out before you determine your award.

MR. HANSEL: Thank you, Your Honor.

THE COURT: All right. That's it. Is there

anything else? That's it on the settlements. Molly?

MR. FINK: There is another motion, Your Honor.

THE COURT: You want to take a break first? Okay. We are going to take a break before we do that.

MR. FINK: Your Honor, if we are taking a break, I would make this request: We requested of -- this is the motion related to anti-vibration rubber parts.

THE COURT: Right, right.

MR. FINK: And we asked opposing counsel to extend the courtesy of providing a copy of any presentation materials they intended to use. That request was denied. I would ask, now, that we be able to review them during this break.

MR. S. REISS: I have no problem with that, Your Honor.

THE COURT: All right. You may so do. Then we will make the break -- it's 11:54. Can we start again at 12:15? Would that be enough time?

MR. S. REISS: That's fine, Your Honor. Thank you.

THE LAW CLERK: All rise. Court is in recess.

(Court recessed at 11:54 a.m.)

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(Court reconvened at 12:21 p.m.; Court and Counsel present.)

THE LAW CLERK: All rise. Court is again in

session. You may be seated.

THE COURT: Before you begin your motion, I just wanted to ask -- it looks like everybody left -- if there was anything else for the record? No, because this the only motion that we have now. All right.

MR. S. REISS: Thank you, Your Honor. The best laid plans; so we had a PowerPoint which doesn't seem to be working, but that's fine. I think Your Honor has a hard copy, and we have provided hard copies to plaintiffs' counsel as well -- direct purchaser counsel.

THE COURT: I do.

MR. S. REISS: And I will just refer to the pages, which are on the bottom-right-hand side of the hard copy, as I go along here.

I'm Steve Reiss --

THE COURT: I have read the motion. I find this a very interesting motion so I'm looking forward to the argument. I'm sorry your PowerPoint didn't work, but we've got it here anyway, so it doesn't make any difference.

MR. S. REISS: Thank you, Your Honor. Steve Reiss, and I represent the Bridgestone defendants. And I'm also here on behalf of the other three AVRP defendants; Toyo, Yamashita and Tokai.

And as Your Honor knows, you've read the papers, this is the motion by the AVRP defendants to enforce the

settlement and the injunction that went along in this settlement in the end payor settlements of the AVRP case.

And just to provide a little bit of context, the Court certainly knows it, but I thought it would be useful -- this starts with page 2 -- just to go over where we are, generally, and then to bring it back to the specific AVRP end payor settlement.

Over 40 end payor cases have been settled. I think the Court was advised this morning, there's only one, only one left. And the end payor settlements were for a total of about $1.2 billion, and there are 147 separate end payor settlements, including the AVRP settlement, and that's going to become relevant later on.

THE COURT: One hundred forty-seven separate settlements?

MR. S. REISS: Yes, Your Honor.

THE COURT: I know that --

MR. S. REISS: You have been very busy. It's remarkable.

In every one of those cases, in every one, the Court ensured the integrity and the finality of the settlements, just as the Court did today. It approved the terms of the settlement agreements. It approved the procedures to notify absent class members. It carefully certified each settlement class. And finally, it entered an

injunction enjoining class members who did not opt out from proceeding with any further litigation relating to or arising out of the Complaints that were settled.

So as a result, basic class action law, every member of the class, end payor class, in every one of those 147 settlements, that did not opt out, is bound by the settlement. Basic class action law.

Now let me focus on this particular case, because in some ways this case was -- was -- was different, because it was actually litigated. So the end payor case, in AVRP, the end payors brought their indirect purchaser case in June of 2014, and they alleged -- this is on page 3 -- it's important, they allege that they indirectly purchased AVRPs from defendants in one of two ways, either as component parts, that is, parts installed in the new vehicles they purchased, or as replacement parts purchased standalone or as part of the repair process. That was the EPP complaint.

And the EPP counsel, who obviously were highly respected and very capable, as the Court noted, they filed notice of appearance as an interested party in the EPP case in 2014, the same year that the EPP case was actually initiated.

Now, I say the EPP case is a bit different from a number of the other AVRP EPP cases, and different in this respect, it was litigated, and we have some of the highlights

of the litigation. But the AVRP defendants produced millions of pages of documents, there were depositions of virtually every EPP class representative in every state, there were over 100 third-party depositions of auto dealers, there were depositions of OEM representatives, and there were depositions of numerous employees from each of the defendants.

After all of that, as often happens and has happened repeatedly in these matters, the case is finally settled. And having litigated those cases extensively, the four AVRP defendants settled the EPP cases for a total of $81.5 million. By the way, I think that dwarfs any of the EPP settlements that came before the Court today.

And as was true of all of the other 147 EPP settlements, each settlement agreement contained a full release -- this is on page 4, Your Honor -- which, quote, completely released, acquitted and forever discharged the defendants, quote, from any and all claims, demands, actions, suits, causes of actions, in any way arising out of or relating in any way to the alleged conspiracy. That's a fairly standard release.

And critically, each settlement agreement -- and I should note here, Your Honor, that the settlement agreements for each of the four AVRP defendants and all of the surrounding legal documents are virtually identical.

So each settlement agreement contained the following class settlement -- the following settlement class definition, and it appears at the bottom of page 4. All persons and entities that from March 1st, 1996, through the execution date, purchased or leased a new vehicle in the United States, not for resale, which included one or more anti-vibration rubber parts as a component part, or -- and this is the critical part, Your Honor -- or indirectly purchased one or more anti-vibration rubber parts as a replacement part, which were manufactured or sold by a defendant, any current or former subsidiary of a defendant, or any co-conspirators of a defendant.

I'm going to come back to that, because it's why this motion is so valid.

THE COURT: Come back to why it's more indirectly purchased. What does that mean, indirectly purchased?

MR. S. REISS: Well, what it means, Your Honor, is very simple, it means purchased from someone other than a defendant. Purchased from someone other -- I'm going to explain why that is absolutely clear, but purchased from someone other than the antitrust violator. That's an indirect purchase. If you purchase from the antitrust violator -- from the named antitrust violator defendant, that's a direct purchase. If you purchased from someone other than the named antitrust violator defendant, that's an

indirect purchase. And that's just not common sense plain meaning, it is also -- and I'm going to get to that in a minute -- what the Supreme Court has said and what this Court has said.

So just to sort of square the circle on the EPP settlements in this case, in the round two -- and this is on page 5, Your Honor. In the round two and round three orders, this Court approved each settlement agreement in the AVRP case and certified each EPP settlement class. This Court approved the settlement class definitions, which included anyone who purchased an AVRP, quote, as a replacement part from, quote, a defendant, or any current or former subsidiary of a defendant. I'm going to come back and show why that's so important.

This Court also approved the nationwide class notice procedures, and ruled they satisfied both due process and Rule 23(e)(1). The Court has done this numerous times, in numerous settlements, throughout the course of the auto parts litigation.

Now, the only EPP class members in the AVRP cases who opted out of the settlement were GEICO -- Your Honor, I know, is quite familiar with GEICO -- a Mr. Terry Sershion, who opted out of Bridgestone, Yamashita and Toyo settlement classes, and a Mr. Willis Jonson who opted out of the Tokai class settlements. None of the three named plaintiffs in the

direct -- in the so-called direct purchaser case, Anderson, LaRue or Lee, opted out of any of the AVRP EPP settlements. There's no dispute about that. So --

THE COURT: Let me get these dates right. They filed their direct purchaser claim -- these three individuals, when, again?

MR. S. REISS: They filed -- and Your Honor, if the Court can refer to it, we have a timeline of everything on page 8.

THE COURT: Oh, I will wait until you get there.

MR. S. REISS: But to answer the Court's question, the DPP Complaint was filed on November 15th, 2016, more than two years after the EPP claim. And Your Honor may remember, because we made a point of it, the DPP claim with these supposed named -- with these named plaintiffs were filed the day before the Statute of Limitation ran. And Mr. Fink, when we had the argument on the Motion to Dismiss, explained to the Court, look, we got the best plaintiffs we could, which I agree with him, only they are not real direct purchasers.

Now having gone through the required procedures, this Court approved each of the settlement agreements for each of the four AVRP defendants. And in the final judgments, all of which have been issued, this Court permanently enjoined every member of the settlement classes from pursuing any further litigation against the defendants

relating to or arising out of the antitrust complaint.

And again, we quote this, the injunction on page 6 of our presentation: All persons and entities who are the releasors -- that's the class members -- are barred and enjoined from commencing, prosecuting, or continuing in an individual or representative or derivative capacity against the defendants in this or any other jurisdiction, any and all claims, causes of action or lawsuits which they have, had, or in the future may have, arising out of or related to any of the released claims as defined in the settlement agreement.

I don't think there is any dispute that that release prevented the members of the EPP class, who didn't opt out, from continuing any more litigation relating to the settled antitrust suits.

Now, let's get very specific about what happens now, in the current direct purchaser case. So Jerry -- this is on page 7, Your Honor. Jerry Anderson, Laura LaRue and Christopher Lee, they are the three named plaintiffs in the DPP case. They all allege that they had their cars repaired at a repair shop that is ultimately owned, through three or four tiers, by Bridgestone. An auto -- the name of the stores, I think, were WheelWorks and Tires Plus, and I will get to that. And they maintain, as I'm sure you will hear from Mr. Fink, that they are direct purchasers capable of bringing a direct purchaser suit.

They then asked, in May of this year, plaintiffs' counsel asked for us to turn over the discovery that we had provided in the DOJ investigations. And we said your three plaintiffs are bound by the EPP settlement, they can't continue any litigation, they are enjoined. Obviously, the plaintiffs' lawyers have a different view of that.

And on June 4th, we filed -- the AVRP defendants filed this Motion to Enforce the Final Judgment to rebar these plaintiffs, the EPP class members, from continuing their action.

Now, you know, plaintiffs' lawyers are very good and they are going to keep pushing, so on August 27th of this year, the plaintiffs' counsel, the releasors, filed a motion with this Court to compel the DOJ discovery, and they did that even though this motion was pending -- fully briefed and pending. This Court had denied the releasors' request for DOJ discovery at the status conference on June 5th. And the Court referred this motion to Special Master Esshaki, and Mr. -- Special Master Esshaki, last week, denied their request for DOJ discovery, saying it would require a substantive ruling that EPP settlement does not extend to DPPs, that is not within the purview of the Special Master. That ruling was, obviously, quite correct.

The next page, Your Honor, is just a timeline which we provided for the Court's information, that sets forth both

the meaningful events in both the end payor AVRP litigation and the -- and in this litigation, as well, and that's, I think, a handy reference. If the Court has any questions about when events occurred, we can always refer back to that.

So now let me get to the punch line. The named DPP plaintiffs are members of the EPP settlement class, and they are bound by this Court's final judgment and injunction that attended it in the EPP settlement class. And let me explain, in detail, why that is. This starts -- this is on page 9, Your Honor.

Even though they styled their Complaint as a direct purchaser case, the three plaintiffs assert claims based on their indirect purchase of replacement AVRPs from an entity of which one of the defendants is the ultimate parent. I'm going to show you the chain, according to them, in a minute.

The releasors claim they purchased replacement AVRPs from a fourth tier Bridgestone subsidiary, not from Bridgestone, the defendant Bridgestone itself, or from the other Bridgestone named defendant, BAPM. They admit it is not contested that they purchased from a Bridgestone subsidiary, it's a fourth tier subsidiary, at best, that's not alleged to have committed an antitrust violation, that's not named as a defendant. Okay. Those are the retail WheelWorks and Tire Plus stores.

The releasors -- this is critical -- they do not

dispute, first, that their purchase of replacement AVRPs is the exact type of purchase included in the EPP settlement class. They also don't dispute that their purchases are not different from those of thousands, and it may be millions, who knows, but thousands of other absent class EPP settlement class members, just like those other absent settlement class purchasers.

They also don't dispute they didn't opt out of the AVRP EPP settlements, because that's clear that they didn't. And they didn't opt out, even though, as this Court found with respect to each of those four settlements, the EPPs provided constitutionally adequate nationwide notice to the settlement classes, and even more, four of the releasors' counsel filed notices of appearance in the EPP case, received docket alerts about each settlement release, class definition, class certification and final judgment.

To put a fine point on it, Your Honor, if there were three indirect purchaser class members in the United States that had the best conceivable notice of each of these four settlements, it was Anderson, LaRue and Lee. Why? Because their lawyers are in this very courtroom. So there is no question that they knew what was going on. There no question that they received adequate notice.

Here, it comes down to this: Their sole argument that Anderson, LaRue and Lee are not bound by this Court's

injunction and final judgment in the four AVRP settlements comes down to this. Those settlements excluded direct purchasers, and they say, Anderson, LaRue and Lee are direct purchasers, they are not indirect purchasers, despite the fact that they look like every other indirect purchaser in the settlement class.

Now, there are four reasons -- at least four, four reasons why Anderson, LaRue and Lee are not direct purchasers.

First, is just common sense. A direct purchaser is somebody who purchased from a defendant, the antitrust violator. And by the way, when you read class definitions and when you read settlement agreements, it is a contract. It is clear, those are the plain meanings of those words. You purchased directly from a defendant who is the alleged antitrust violator, that's a direct purchase.

Second, were that not clear enough, the Supreme Court last year, in Apple, said just that, it said it in words in one syllable. Here is what the Supreme Court said. The Supreme Court said -- they affirmed -- excuse me, Your Honor -- they reaffirmed -- what the Supreme Court said was, quote, the simple enough rule that, quote, the immediate buyers from the alleged antitrust violators -- that's direct purchasers -- may maintain a suit against the antitrust violators, but indirect purchasers who are two or more steps

removed from the violator in a distribution chain may not sue. That is exactly who Anderson, LaRue and Lee are.

How do we know that? Your Honor, we have a chart on page 10 that comes from the plaintiffs' own brief on the Motion to Dismiss. This is their chart, not ours. We said this chart was inaccurate, but put that aside. This is their chart. Their chart has Defendant Bridgestone Corp., BSJ, defendant, alleged antitrust violator. Bridgestone Americas, Inc., not a defendant, not an alleged antitrust violator. That's who they claim Bridgestone's parent company sold the AVRPs to. Then they say Bridgestone Americas, Inc., which not named as a defendant, which is not named as an antitrust violator, sold the AVRPs to Bridgestone retail operations, a subsidiary, not named as a defendant, not alleged to be an antitrust violator. And they then say that BSRO sold the AVRPs to the WheelWorks and Tires Plus store, fifth tier, not named as a defendant, not an antitrust violator.

So by their very own chart, Anderson, LaRue and Lee are indirect purchasers from a fourth or maybe fifth-tier subsidiary of a defendant, they are not direct purchasers. And if there is any question about that, this Court has already recognized that they are not direct purchasers.

They rely -- their whole argument is, we are direct purchasers because we've alleged that we are entitled to an exception to the Illinois Brick rule that bars indirect

purchasers from suing. We allege that we are entitled to the ownership and control exception to Illinois Brick. On that basis, they claim that makes us direct purchasers. Well, the short answer is, no, it doesn't; it makes you indirect purchasers who may, if you satisfy your burdens -- and by the way, the Sixth Circuit has never found a case in which those burdens were satisfied. It makes you an able -- it makes you -- it gives you standing to sue as a direct purchaser, if you can prove the ownership and control exception. But even if you can prove the ownership and control exception, that does not transmogrify a direct purchaser -- I'm sorry, an indirect purchaser into a direct purchaser.

Now, direct purchasers never have to make use of or prove an exception to Illinois Brick. They don't have to allege that. They don't have to prove that. They don't carry the burden, and it is their burden, of proving an exception to Illinois Brick. It is never an issue, they are direct purchasers. And Your Honor has seen this in all of the direct purchaser cases, except this one that they brought. No one has come in and said, oh, they are going to have to prove an ownership and control exception. They say -- they have alleged they purchased directly from the named defendant antitrust violator.

And this Court has recognized that simply because you may be able to prove an exception to Illinois Brick -- by

the way, we think they will never be able to prove it, but that's besides the point. This Court recognized, just because you may be able to prove an exception to Illinois Brick, that doesn't make you a direct purchaser. That's what the Court said, and this is on page 11, Your Honor. The owned or controlled exception to Illinois Brick permits suits brought by indirect purchasers when the direct purchaser to whom they pay the passed-on overcharge is owned or controlled by a conspirator. This Court recognized that Illinois Brick -- the exceptions to Illinois Brick only apply to indirect purchasers.

And the releasors, themselves, recognize this. This is in their own brief, they say, this Court stated that the Supreme Court expressly recognized an exception to the Illinois Brick rule in those situations where direct purchaser is owned or controlled by its customers, and the courts have expanded the exception to include instances where the defendant owns or controls the intermediary that sold the goods to the indirect purchaser plaintiff. They recognize that their plaintiffs are indirect purchasers.

Now, even if they could prove, after some years of litigation, that these named plaintiffs are entitled to the Illinois -- the ownership or control exception to Illinois Brick, that does not somehow magically, ex post facto, transform an indirect purchaser into a direct purchaser.

Here's why, and it's really practical, Your Honor. This is why it is so radical, what they are suggesting.

At the time the EPP cases are settled, class notice goes out, and the class notice goes out to the class members who clearly include these three indirect purchasers. No dispute about that. They are purchasers of replacement parts from a subsidiary of a defendant. They are squarely within the definition of the class.

Their argument is that, wait a second, Your Honor, we may be able to prove, in two or three years, that the ownership or control exception applies to these three plaintiffs. How exactly, as a practical matter, does that work? They are indirect class members at the time of the final judgment in the class notice. They can't magically be transformed, two or three years later, even if they can carry their burden, into direct purchasers. And if they are, what does that mean? That they are no longer indirect purchasers. If they made a claim, they have to give that money back?

And what about direct purchasers, if they are right, that people who purchase indirectly magically become direct purchasers? What about direct purchaser class notices? It is not going out to the people who purchased at WheelWorks or Tire Plus stores. They are not being included in the direct purchaser notices. You know why? Because they are not direct purchasers.

So to summarize, Your Honor, four reasons, minimum, why these indirect purchasers are not and can never be direct purchasers. One, common sense plain meaning of the words direct purchaser. Two, the Supreme Court decision in Apple explained very clearly the simple enough rule that direct purchasers are those that purchased from the alleged antitrust violator. Three, this Court has already recognized that even if you can make the case that you are entitled to an exception, the ownership or control exception to Illinois Brick, even if you're still -- start out a direct purchaser. And fourth, the practicalities of being able to retroactively transform an indirect purchaser, who received notice as an indirect purchaser, and probably made a claim as an indirect purchaser, two or three or four years later to transform that person into a direct purchaser, would utterly create chaos in this Court's settlements, both the indirect settlements and the direct settlements, because those people now say, we are direct, do we get to claim in the direct? Well, the claims period may be over. What happens?

THE COURT: What happened in the -- when the -- when they filed their Complaint, did you raise this as a defense?

MR. S. REISS: Oh, Your Honor, we moved to dismiss for numerous reasons. Your Honor, may recall, and I know it's --

THE COURT: I did some ruling on it, but I don't remember what.

MR. S. REISS: We allege that they lack both constitutional standing, because they couldn't even allege they bought a part made by any defendant, they didn't know what part they bought, and we also challenge their antitrust standing. And Your Honor denied that motion, but Your Honor did, you may recall, certify the appeal. You granted our 1291(b) motion. The Sixth Circuit said well, we might like to see some more facts, so they didn't accept the case, but we clearly raised this.

We also, frankly, raised the question of whether the Court should strike the class allegations, because these three plaintiffs were so clearly incapable of representing a class of major OEMs who were the purchasers of these parts. So, yes, Your Honor, we have raised this issue from the very start.

THE COURT: If the Court finds that the plaintiffs are part of the end payor class, should they proceed as opt-outs or --

MR. S. REISS: Well, Your Honor, I guess the question is, to what purpose? If they -- if they -- if they admit that they are members of the end payor class, which they are, if they are going to opt out --

THE COURT: Every other --

MR. S. REISS: Yeah, and if they want to do that in order to be able to pursue the DPP case, then it becomes clear they can't be class representatives. They are indirect purchasers trying to represent a class of direct purchasers, and the issues are much, much different.

THE COURT: Or they could opt out and file their own end payor class -- I mean, not class, but end payor case.

MR. S. REISS: I -- I -- Your Honor, I'm willing to bet my bank account they wouldn't do that.

THE COURT: Okay.

MR. S. REISS: Thank you, Your Honor.

THE COURT: All right. Mr. Fink.

MR. D. FINK: Your Honor, before I begin, I have to acknowledge something referenced by the Court earlier. Yes, my beard has come and gone, but I want to note that it was brown when we started this process.

THE COURT: Yeah.

MR. FINK: More importantly, at the time that these cases started, none of my children were married and I was. Now, both of my children are married, and I'm not.

THE COURT: I hope not due to this case?

MR. D. FINK: No, no. I also want to note that I had no grandchild, and thanks to the very hard work of my son, Nate, I now have five grand children, four from him, and one from my daughter. So times have changed a bit.

THE COURT: Okay.

MR. D. FINK: Your Honor, the Court asked a very pertinent question, and got the wrong answer. The Court said, did you raise this as a defense? And the answer is no. They did file a Motion to Dismiss, and that's very important, because this Court looked at that Motion to Dismiss, where they were saying, oh, these folks are indirect purchasers and so they can't represent a class of direct purchasers, and the Court understood our argument, which was this -- these three individuals directly purchased -- directly purchased from a wholly-owned subsidiary of a member of the conspiracy -- of the price-fixing conspiracy.

So in the end -- and we are going to cover all of this, but in the end, this entire motion is a rehash of their previous Motion to Dismiss, which was denied. I understand, Mr. Reiss has been clear, he does not like our plaintiffs. He does not think they should be class representatives. He does not think they should be able to go forward with the case. But he made that argument in a motion that was filed two years ago and argued over a year ago, and the Court ruled against him. The Court found that when these individuals purchased -- as the Court will recall, we had a lot of fun that day, they had a PowerPoint that was working, and we talked about that every one of our purchasers alleges that they directly purchased from a Firestone, a Bridgestone, or

other retail outlet that is wholly owned, ultimately, by a parent company that is part of the conspiracy. It couldn't be more clear.

THE COURT: Okay. Let me go through that chart that they have on page 10.

MR. D. FINK: Okay. What that chart shows is that -- and why they say this is five levels, I don't know. But it doesn't matter whether it is one level or two levels or 105 levels; as long as every level is wholly owned, ultimately, by the parent, it is and can be deemed a direct purchase from the parent. That's all this is about.

They talk about the Apple case. In the Apple case, the court -- which had nothing to do with the facts in this case, but the principles set forth in the Apple case are perfectly okay with us. One of the things that the Apple case said -- that the Supreme Court said, and I don't often -- I didn't expect myself to be in court agreeing with Brett Kavanaugh, but what was said in the Apple case was that if they went with Apple's theory, it would furnish monopolistic retailers with a how-to guide for evasion of the antitrust laws. That's exactly what they are looking for here, a how-to guide to evade the antitrust laws, because here is how they do it.

We are Bridgestone -- and by the way, they throw their self at the mercy of the Court by saying we have

already paid $81 million or we have agreed to pay $81 million, in total, to the end payors, how could we expect to pay more? I will tell you how you could expect to pay more. Bridgestone alone -- this -- what they did here was so outrageous, so incredibly outrageous, that Bridgestone, alone, paid a criminal fine of $425 million, $425 million for their price fixing of anti-vibration rubber parts. And they are trying to avoid liability with this subterfuge, and the subterfuge is, we don't sell directly from a retailer to you. Instead, we own a company that owns a company that owns the retailer, and that's this chart. Bridgestone wholly owns Bridgestone Americas, Bridgestone Americas wholly owns Bridgestone retail operations, and Bridgestone retail operations wholly owns outlets, some are Firestone, some have different names. We are going to have to prove that, but we can prove that. We are going to have to prove that. We do allege that. So Bridgestone is still the parent.

Now, just to be clear, Your Honor, the Court has already ruled on this. You ruled in our favor on that very subject. They keep saying you ruled that we were indirect. That's insanity, and I will explain why. It makes no sense at all. It is just a semantic argument. It has nothing to do with the substance of what this Court did. This Court saw through the subterfuge, and this Court has already ruled that our clients can be deemed direct purchasers for purposes of

this case.

Now, they were upset with that ruling. You could hear, Mr. Reiss doesn't like our plaintiffs. I understand that. So he did the best he could. He sought permission from this Court to go to the Sixth Circuit. This Court did not interfere. This Court said you want to go to the Sixth Circuit, you can go to the Sixth Circuit. It might avoid unnecessary litigation. Instead, of course, it created unnecessary litigation and delay because they went to the Sixth Circuit, we all briefed this in the Sixth Circuit, and the Sixth Circuit did not take the interlocutory appeal. The Sixth Circuit did not review or reverse this Court's ruling.

The law of this case is established already, and the law of this case is that these individuals, because of the special way that the facts are laid out, these individuals are, in fact, direct purchasers.

So I would like to take the Court through what they are really arguing, and as I did before, I will go through their brief.

THE COURT: I have a question, a little bit off point, but --

MR. D. FINK: I doubt it is off point.

THE COURT: -- but are any of the named direct purchasers from non-repealer states?

MR. D. FINK: You stumped the band, Your Honor. I

don't know. I can find out for the Court, but I really don't know. To be very honest with you, I don't know what states they are in. I would to have look back. I hadn't looked at that question. It's a good question. It's an interesting question.

And it might be relevant, if we were wrong in the rest of our argument, but the rest of the argument actually flows pretty neatly and pretty cleanly when we lay it out and we look at the words of these settlement agreements, et cetera.

At page 4 of their PowerPoint -- I don't know what you call a PowerPoint that doesn't project. I guess we call it a not so powerful PowerPoint.

But at page 4, the second paragraph, which was read to you by Mr. Reiss, describes, in bold, what the full release is. It says, each settlement agreement contained a full release. And he's right, they are virtually identical. And the words that he shows there, the words that they present, are, in fact, in the release.

But the same paragraph -- now, just to be specific, there are different paragraphs in different matters, but let's go with the Bridgestone release, because -- Bridgestone settlement agreement, because that's the one he talked about the most. That's his client. So in the Bridgestone settlement agreement, it is paragraph 23, yes, these words

are there, but here are the words he didn't read to you. In paragraph 23 it says, provided, however, that nothing in herein shall release, one, any claims made by direct purchasers of anti-vibration rubber parts. They're explicitly excluded from his release. Made claims for direct purchasers are not barred by this release, they are explicitly excluded from the release, and he can't say, therefore, that our claims were barred.

It is -- believe it or not, that would be the beginning and the end, but we will go further. There are plenty of other reasons that he's wrong -- that they are wrong.

The release does not release us because the release carves out, even if we are defined as releasors, which we are not, but even if we are defined as releasors, this would not release us, because it does not release any claims made by direct purchasers of anti-vibration rubber parts.

THE COURT: The real issue is, are you a direct or an indirect purchaser, that's the bottom line, right? Can you be both?

MR. D. FINK: In the end, that is the real issue, and this Court has already ruled that we can proceed as direct purchasers. The Court has ruled that on -- in denying their Motion to Dismiss.

But let me take it a little bit further, and we are

going to actually look at the language. It will be more and more clear to this Court, the closer the Court looks at what it ruled before and then looks at this, that this is really just a collateral attack on a ruling that this Court already made.

I want to take a moment to look at their timeline, because the Court asked the question, "Did you raise this as a defense?" The answer the Court got related to the Motion to Dismiss, which didn't address this, but it is a much more interesting question than that, because they say it should be obvious that these people are released. It should be obvious that their claims have already been released, that they were part of the class. And the example they give in their brief is the Tokai rubber settlement, which occurred in September of 2016.

So if you look at the timeline, they don't show that, but if you look on their timeline, it should show on September 7th, 2016, a Tokai settlement was submitted to the Court for approval. The settlement was reached early in the year, but it was submitted to the Court for approval on September 7th. We filed our lawsuit on November 15th. Well, a lot happened between the time that we filed our lawsuit and their filing of an answer. Among other things, they filed the Motion to Dismiss, which was denied by the Court.

So they don't end up filing an answer, and this

should be on the timeline. April 12th, 2018, right after the order on the Motion to Dismiss, April 12th, 2018, answers and affirmative defenses were filed, including the answers of Sumitomo Rubber, and -- I might be getting the name a little wrong, but it is Sumitomo, who was now in place of Tokai, and DTR or DTR Industries. And those answers, including affirmative defenses, don't raise release as an affirmative defense. They didn't think they released our claims. They didn't think we had released our claims. They didn't even put it in their affirmative defenses, when they filed affirmative defenses -- when Sumitomo filed their affirmative defenses.

Now, Your Honor, they say in here and throughout their argument, that our clients are indistinguishable from the releasors, and that's because they reject this Court's ruling. They don't see any distinction. They see no distinction between an individual that purchases a price-fixed product from a subsidiary of the defendant. They don't see a distinction between that person and a person who purchases a price-fixed product from some third party, like an OEM or car dealership that purchased the product from the defendant. It is an enormous difference, and it is a difference that this Court recognized. It is completely distinguishable.

We are representing people who purchased from

someone is owned by the defendant. These other people, who we do not say we are the same, because we are not the same as these other people, the people they call the releasors. We are not the same as the others, because they purchased from third parties; they didn't purchase from the companies that are owned by the defendants. It is an enormous difference. It is a complete difference.

Now, they want to reject that, they are free to reject that. But they don't get to change who we are by just calling us something. Interestingly, in the brief, they -- it is not until the beginning of the third argument, they had already defined releasors, because they used the language from the releases that defined releasors, but in the beginning of the third argument, they define our three clients as releasors. And then, from there to the end of the brief, on 50 -- yes, I was bored and I counted -- 50 separate times they use the word releasors to describe our clients, as though we are in agreement, that we have released, but we want to file this suit anyway. We are not in agreement that we released. We are not part of the release.

Now I want to go through the words of the release. Again, if you go to -- does the Court have the briefs that the parties filed before it?

THE COURT: I do.

MR. D. FINK: That would be wonderful. If the

Court could pull out defendants' brief, on page 10 of defendants' brief, they say -- is the Court on page 10?

THE COURT: No.

MR. D. FINK: Okay. I can wait.

THE COURT: Just one second. Okay.

MR. D. FINK: On page 10 it says at the beginning of argument number one, and I will try not to talk fast when I read. Based on the allegations contained in their own pleadings, they argue, the releasors -- that's what they are calling us now, but we aren't releasors -- releasors are clearly members of the EPP settlement classes. These settlement classes included every purchaser in the United States who purchased AVRPs as, quote, a replacement part, which were manufactured or sold by a defendant, any current or former subsidiary of the defendant -- I'm sorry -- or any co-conspirator of a defendant.

What's missing from that definition? What's missing -- and by the way, they do the same thing in their PowerPoint. The second paragraph on page 5 of their PowerPoint says this Court approved the settlement class definitions -- they say -- which included anyone who purchased an AVRP as a replacement part from a defendant, or any current or former subsidiary of a defendant.

But, no, that's not what the class definition said, as this Court correctly pointed out to Counsel during his

argument. The actual language of the settlement agreement reads -- as soon as I pull it up, I will read it accurately. It reads, not anyone who purchased AVRPs as a replacement part, but it reads -- and maybe I should back up just a minute.

There are two separate types of members of their settlement class. There are two types that are defined in the definition of releasors. All persons and entities during the class period who purchased or leased a new vehicle in the United States, not for resale, which included one or more anti-vibration rubber parts as a component part. Now, notice that doesn't say indirectly or directly. It says, all persons and entities that purchased or leased a new vehicle. They are all in this class, absolutely.

But then it says, or -- this is the second group -- or indirectly purchased one or more anti-vibration rubber part as a replacement part. Indirectly purchased. It has the word indirectly. The Court noticed that when he was reading before, and the Court said, well, is it an indirect or isn't it an indirect?

Our clients directly purchased one or more anti-vibration rubber parts as a replacement part, which were manufactured or sold by a defendant, or a former subsidiary -- a current or former subsidiary of a defendant. It could not be more clear. We are literally defined out.

We are not part of their definition. Their definition says indirectly purchased. We only address those who directly purchased. Our folks purchased at their stores, that's an enormous difference, an enormous difference.

Now they don't want to acknowledge that, so that if we look at the PowerPoint, on page 9. On page 9, they say the releasors do not dispute -- this is the third bullet point. The releasors do not dispute -- and Mr. Reiss said this is critical -- that their purchase of replacement AVRPs is the exact -- the exact type of purchase included in the EPP settlement class. He then says, we don't dispute that their purchases are not different from those of the thousands of other absent EPP settlement class members.

We absolutely dispute that. That's -- our whole case is disputing that. From the beginning, we have disputed that. We have always said we only represent those who directly purchased. And there are thousands -- he's right, probably hundreds of thousands, they hurt a lot of people, maybe it was a million. Lots of people who were hurt by them, who are members of the indirect class. Those are the ones who didn't purchase from a Firestone, a Bridgestone, or other wholly-owned business entity. It's a wholly-owned entity.

THE COURT: Let me ask you, Mr. Esshaki entered an order this summer, requiring the defendants to identify class

members of your case -- of the DPP case.

MR. D. FINK: I'm sorry, Your Honor. I'm not sure I know what the Court is referring to.

THE COURT: I don't have that order, here, but I thought it was entered on July 18th.

MR. D. FINK: In this case, in the AVRP case?

THE COURT: I thought so. Maybe not. Let me --

MR. D. FINK: The only order I'm familiar with --

THE COURT: Oh, no, that might be in the end payor case.

MR. D. FINK: Right, because we are not there yet. The only order I'm familiar with is his recent order that essentially said it's premature. We had a Motion to Compel, which was assigned to Judge Esshaki -- or Magistrate Esshaki -- or Special Master Esshaki. I keep promoting him. And what he said was, no, at the status conference, the Judge specifically said that we would cross that bridge when we come to it, essentially, and we haven't come to it, so let's let the judge do this. And also he thought it was beyond the scope of the his assignment, because it involved a substantive decision that he didn't think was properly before him.

THE COURT: Okay.

MR. D. FINK: So -- now the same definition -- the same definition that we are referring to, and there's no

dispute as to what the definition is, it is all over the place. I mean, it's repeated in each one of these settlement agreements. The same definition says -- and they don't give this by the way. When they give you their -- their -- I have to find this now. I'm sorry.

On page 4, where they give you -- the settlement agreement gives the settlement class definition, which includes indirectly purchased, there's a period there, but that's not actually the end of the quotation. It then says, excluded from the settlement class are, and it lists some obvious defendants, their parents, subsidiaries, et cetera, and then it says, and persons who purchased anti-vibration rubber parts directly. They are explicitly excluded from the class. And there was no reason for our clients to opt out, they purchased directly, and there is absolutely no reason for them to opt out. It made no sense for them to opt out.

THE COURT: So how -- in defining your class, who would be members of your class, those who purchased from subsidiaries? Do you list the subsidiaries or how do you do that?

MR. D. FINK: Well, the members of our class are all of the direct purchasers of these price-fixed products. So the members of our class include not just people who purchased from the subsidiaries, although it does include those, but it's also anybody who purchased directly from the

defendants, and that includes OEMs, that includes first-tier suppliers, that includes retailers. Anybody that's purchasing directly is a member of the class.

THE COURT: How do you notify them of these subsidiaries? How would anybody ever know that this Firestone little store was --

MR. FINK: We will have done it through discovery. As the case goes on, we will establish which locations were, in fact -- you know, which locations were wholly owned. It is not really that difficult, because they advertise -- I think the Court may remember, they are very proud of their vertical integration, and we showed that from some slides before. They are very, very proud of the fact that they go from the rubber plantation to the road. They go the whole route. And so we have the names. There is always -- there is often complications in proving these things out, and we will need assistance to do it, but we'll do some of the proofs. Some of it, ultimately, in terms of notice, will involve a claims administrator that will assist us.

You know, the fact is those are issues way down the road. Right now, the issue is, did they directly purchase from a member of the conspiracy? The Court has already ruled on that, in denying their Motion to Dismiss. The Court has already made that ruling. They just asking the Court to reconsider it. They can say it any way they want, but they

are asking the Court to reconsider it. Somebody in their office one day, woke up and said, oh, we will call it a release. If they thought it before, they would have plead it before, they would have filed a motion before, but they waited.

THE COURT: In your interpretation of what I did, you are saying that I have made a determination that your clients are direct purchasers and not indirect purchasers, I have said that specifically.

MR. D. FINK: Well, you have made a determination that our clients can go forward as representatives of -- for now, obviously you haven't made an final determination on class cert or anything like that, but you have made the determination that -- that our plaintiffs, who allege that we purchased directly from one of the defendants' wholly-owned subsidiaries, that our plaintiffs can go forward, in part based on the ownership control exception to Illinois Brick.

They make an argument today --

THE COURT: Well, then you have the opportunity to go forward, but I didn't decide it, per se.

MR. D. FINK: Well, you decided that we could go forward.

THE COURT: Yes.

MR. D. FINK: Correct. I'm sorry. The Court decided that we could go forward. The Court certainly hasn't

ruled on the merits, the Court hasn't any evidence on the merits, except for our allegations. Trust me, we will prove it, but that's not really before the Court yet.

The -- in the Court's ruling in March of 2018, March 29th, 2018, the Court said the parties dispute whether plaintiffs can establish that they are direct purchasers. You went through that. You say the owned or controlled exception to Illinois Brick permits suits brought by -- and this is where they get excited that you used the word indirect purchasers, when the direct purchasers to whom they paid the passed-on charges owned or controlled by a conspirator.

That's a semantic argument. We are direct purchasers. We might be direct purchasers with an asterisk, but we are direct purchasers. We purchased directly from a defendant or a defendant's, in this case, subsidiary.

THE COURT: Okay.

MR. D. FINK: And, you know, they get excited and say, nobody has done this before. It is the ruling. It is what we are dealing with. It is the law of the case. This isn't new.

They tried to get the Sixth Circuit to reverse it, and the Sixth Circuit didn't reverse it. I'm not saying the Sixth Circuit ultimately will accept our view, but the Sixth Circuit did not want to intervene at this stage of the

proceedings, and let the case go forward.

Now, I want to be clear, while we are on this whole semantic thing, they keep saying that because in one sentence you say "permits suits brought by indirect purchasers," and then they talk about the Apple ruling. I will come back to the Apple ruling, but this Court didn't say we are indirect purchasers. This Court, in fact, repeated our allegations, which is that we say that we directly purchased. I'm not saying that you accepted our allegations, but you repeated our allegations. We directly purchased from a wholly-owned subsidiary, and that makes us a direct purchaser. We directly purchased from a wholly-owned subsidiary. We are not indirect.

Indirects are people that buy from some third party that got taken advantage of by the defendant. The defendants' subsidiaries did not get taken advantage of by the defendant, a third party did. If I buy from the third party, then you have the whole issue of pass-on defenses and issues like that. Those issues are irrelevant when you are dealing with a wholly-owned subsidiary that is part of the parent company.

THE COURT: Okay. All right.

MR. D. FINK: Now -- I'm sorry, Your Honor. In -- I think I have already made this point. I want to make sure I don't repeat myself. Okay.

So just to finish out, what I was saying was they say we don't dispute those points, that's exactly what our case is about, we dispute exactly those points. We do not agree, at any level, that this is the exact type of purchase. It's a very different type of purchase. It is a completely different purchase.

Now, interestingly, when they describe -- let me back up. It's not an accident -- it is no accident that the release has the words "indirectly purchased." They wouldn't have wanted to do that. The defendants wanted the broadest possible release they could ever get. Of course, they wanted as broad of a release as possible. And as to the motor vehicles, they got that broad release. It doesn't say indirectly, it just says purchased or leased a vehicle. But why does it say indirectly for the replacement parts? And the reason is because that was the class definition in the indirect case. The end payor plaintiffs -- at paragraph 155 of their complaint, the end payor plaintiffs define these two different types of plaintiffs, one who buys a car and the other who buys a replacement part. And for the ones that buy the replacement part, they explicitly say indirectly, and it says "indirectly" in their language. It has to mean something. It has to mean that you can buy it one way or another, and we are saying that we bought it another way. We bought it directly from a subsidiary.

Interestingly, in their motion they -- as part of their world view that indirect purchasers always look exactly the same, they -- and purchasers of -- and we, to them, look like indirect purchasers. But if you look at page 3 of their motion, they describe the EPP complaint, and here is what they say, on the second paragraph of page 3 in their background description. According to the EPP complaint, they say, once defendants manufactured these AVRPs, they were directly purchased by OEMs and tier-one suppliers. That's what they say, and they cited to the paragraphs in the EPP Complaint. By the way, they are right, that is what it says in the EPP Complaint.

Then they say, following this direct purchase, the EPPs allege that they then indirectly purchased these AVRPs in one of two ways. That's correct. In those instances where OEMs or tier-one suppliers purchased the AVRPs, that created the indirect purchase, when someone else came and purchased from the OEMs, for example, at an auto dealership, or from the tier-one suppliers.

But what's missing from this is some of those AVRPs were neither directly purchased by OEMs or tier-one suppliers. Some of these AVRPs were directly purchased by our clients, people who went into the dealerships that they owned. They don't even refer to them, as though they don't exist, because they don't want them to exist. They don't

want this class to be around. They just define it away, but it is right there, even in their description of what occurred here.

THE COURT: Counsel, we have to wrap up, because we have another case coming in.

MR. D. FINK: Uh-oh. No one told me the Court was doing other work. I don't recall agreeing to that.

Your Honor, in the end, we talked about the exclusions, but the one exclusion that I want to go back to and I want to make sure that we have been very clear with the Court about it. The one exclusion I want to go back to is each settlement agreement says in the release and covenant not to sue, the release, discharge and covenant not to sue, that language we quoted earlier, nothing herein shall release any claims by direct purchasers of anti-vibration rubber parts. So it doesn't matter if they can somehow magically convince the Court -- I don't know how they would -- that we are releasors, because we are defined out of being releasors, but even if we were releasors, which we are not, it wouldn't release claims by direct purchasers, and those are the claims that we are going forward with. Those are the claims this Court said we can go forward with.

Now, very briefly, they talk about the Apple case. They say that the Apple case, as though -- although it was related to this, and it is not, but that's okay, there is

nothing wrong with the Apple case. The Apple case included a reference to black letter law. Indirect purchasers -- and we can just go to their language and then we will be done with this. I have to find their language, but I think it is on -- where did they have the Apple case? I'm sorry, Your Honor. I know it's in here. It was here yesterday -- I mean this morning. Where is the Apple case referred to?

MR. S. REISS: I think it is the last page. It should be the last page.

MR. D. FINK: Well, that's Illinois Brick. Did I drop a page?

MR. S. REISS: Page 10.

MR. D. FINK: I'm sorry, Your Honor. On page 10 --

THE COURT: No, page 11.

MR. D. FINK: Your Honor, at the top of page 10 of their PowerPoint, or weak point, the Supreme Court recently reaffirmed, they say, the simple enough rule that, quote, immediate buyers from the alleged antitrust violators may maintain a suit against the antitrust violators. But indirect purchasers who are two or more steps removed from the violator in a distribution chain may not sue.

That doesn't affect us, because our -- the folks we purchased from are not any steps removed from the violator. They are owned by the violator.

The Court is referring to a classic indirect case,

where an OEM or someone else purchases and then the third party purchases from the OEM. That's a second step. We are not looking at that.

In this case, what Apple -- what the court was looking at was, you look at the substance. That's something else that the court specifically said in the Apple case. In the Apple ruling, the court said Apple's argument -- Apple lost -- Apple's argument would elevate form over substance, and that's exactly what is trying to be done here. They are trying to suggest that because we purchased after two tiers internally, that makes us indirect. That's not what this Court ruled. That's not what the law suggests. And when they say there is no ruling like this in the Sixth Circuit before, frankly, there's no set of facts like this, because it's outlandish to think that they think they can avoid liability for it. It makes no sense at all.

They talked about common sense, that only common sense would tell you that we are not direct purchasers. I don't know where that comes from.

THE COURT: Okay.

MR. D. FINK: Thank you, Your Honor. I will try not to have any more grand children before we come back.

THE COURT: All right. Thank you.

MR. S. REISS: Thank you, Your Honor.

THE COURT: Mr. Reiss, you have five minutes.

MR. S. REISS: Yes. On the timing, Your Honor -- first on the notion that the Court decided this is, obviously, flatly wrong. All the Court did was deny our Motion to Dismiss. And I would note, and it is clear from the timeline, at the time the Court denied our Motion to Dismiss, three of the four settlements were not final, were not approved. We didn't have the ability to make this motion at the time of the Motion to Dismiss. Court clearly did not decide that these guys are direct purchasers at the time of the Motion to Dismiss. The first time that issue, whether they are barred by the EPP settlements, arose was after the last AVRP settlement was final, and that was in December of last year, that's when we moved. Okay. So it's completely and flatly wrong that the Court has decided this.

And that goes to the timing of when we moved. Did we raise this as a defense in the DPP case? No, because we didn't have the Court's orders, decisions and final judgments at that time. That was early in the DPP litigation. As soon as all four AVRP defendants settled the EPP class, had the Court's order, had the injunction, we moved. We couldn't do that before this.

Second, Mr. Fink makes a big deal about the difference between the two indirect purchasers in the EPP settlement class. He says they didn't qualify the first group, the people who purchased an automobile. Well, do you

know why that is? If you purchased an automobile, you are by definition an indirect purchaser. You are buying a car, you are not buying the part. Every purchaser of an automobile is an indirect purchaser. There is no question about that. We didn't have to qualify that, because on its -- I'm sorry. On its face, if you buy a car containing a price-fixed part, you are an indirect purchaser of that part. You are buying the car, you are not buying the part.

And we are clear in the second half -- I think Mr. Fink's argument is exactly wrong. We noticed in the second half of the class definition that it applies to sales from purchases from subsidiaries, and that's because those are indirect purchasers unless the subsidiary is a named defendant or an antitrust violator -- a named antitrust defendant violator, which is what the Apple court said. The simple enough rule.

Mr. Fink struggles mightily, I'll give him credit for that, to try to get around the clear wording of the Supreme Court. That's what they said.

And finally, Mr. Fink also does not deal with the practicalities of what he wants to bring on to this Court, but let me raise a very simple point. Your Honor asked about notice to the DPP class. In none of the prior DPP settlements did they -- and, by the way, they would have included parts sold by the Tires Plus or the WheelWorks

stores. They didn't send notice from the DPP settlements to people who bought parts from those stores. They never asked us for those lists, and there is a really good reason, they are not direct purchasers.

So you would have all of these other parts, DPP settlements, that they send notice to, that clearly don't include the three named plaintiffs in this case. Why? Because they not direct purchasers. Mr. Fink can say we are direct purchasers, we claim they are direct purchasers, we are direct purchasers. Your Honor, I can say I'm Spiderman 20 times, but it doesn't make me Spiderman.

Thank you, Your Honor.

THE COURT: All right.

MR. D. FINK: Your Honor, may I respond just to the points -- just two quick points?

THE COURT: One minute, no more.

MR. D. FINK: One, he says that it says purchasers from subsidiaries and, of course, that makes it indirect, but he neglects to point out that it says indirect purchasers from subsidiaries, so we are back where we started.

Also, the reason that we don't send out notice for our direct classes to the other people who purchased from these stores is because we don't have another situation -- we didn't see another situation where the stores were owned by the conspirators. This is a unique situation, where the

stores where the folks are buying these products are owned by the defendant conspirators. That's why we didn't need to send notice, there was no other member of a class like this before.

Thank you. I'm done.

THE COURT: Thank you. The Court is going to issue an opinion on this. Very good argument. Thank you.

THE LAW CLERK: All rise. Court is adjourned.

(Proceedings concluded at 1:34 p.m.)

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CERTIFICATION

I, Robert L. Smith, Official Court Reporter of the United States District Court, Eastern District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing pages comprise a full, true and correct transcript taken in the matter of In re Automotive Parts Antitrust Litigation, Case No. 12-02311, on Thursday, October 3, 2019.

s/Robert L. Smith
Robert L. Smith, RPR, CSR 5098
Federal Official Court Reporter
United States District Court
Eastern District of Michigan

Date: 10/29/2019

Detroit, Michigan